

The Gazette of India



EXTRAORDINARY

PART II—Section 3

PUBLISHED BY AUTHORITY

No. 95] NEW DELHI, THURSDAY, APRIL 23, 1953

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, 15th April 1953.

S. R. O. 781.—WHEREAS the election of Shri V. V. Ramaswami as a member of the Legislative Assembly of Madras, from the Virudhunagar Constituency of that Assembly, has been called in question by an Election Petition duly presented under Part IV of the Representation of the people Act, 1951 (XLIII of 1951), by Shri A. S. S. S. Sankara Pandia Nadar, Merchant Virudhunagar, Ramanathapuram District, Madras State;

AND WHEREAS, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, TANJORE

PRESENT :

Sri K. S. Venkatraman, I.C.S.—Chairman.

Sri R. Rajagopala Ayyar, B.A., B.L.—Member.

and

Sri P. R. Narasimha Ayyar, B.A., B.L.—Member.

Saturday, the fourth day of April, One thousand, nine hundred and fifty-three.

ELECTION PETITION NO. 58 OF 1952

Sri A. S. S. S. Sankara Pandia Nadar.—Petitioner

Versus

1. Sri V. V. Ramaswami	2. Sri A. Doraiswami	3. Sri A. Rangaswami Reddiar	4. Sri S. V. Angidi Chettiar	5. Sri A. Sankaranarayanan	} Respondents.—(Respondents 4 and 5 added by order, dated 28-11-1952 in C.M.P. No. 2 of 1952.)
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Electon Petition, dated 18-3-1952, under Part VI, Chapter II, Sections 81 to 84 of the Representation of the People Act (Act XLIII of 1951) praying for a declaration under Section 98 of the Act that the election of the 1st respondent Sri V. V. Ramaswami as member of the Madras State Assembly from the Virudhunagar Constituency is void.

This petition coming on for hearing on the 15th, 16th, 17th, 19th, 20th, and 31st days of January 1953, the 2nd, 3rd, 23rd and 24th days of February 1953, the 5th, 6th, 7th, 8th, 10th, 18th and 26th days of March 1953 in the presence of Sri R. Harthara Ayyar and Sri N. Rajagopala Ayyangar, Advocates for the petitioner, of Sri A. Lakshminarayana Ayyar, Sri P. T. Rajan and Sri P. P. Thangamani, Advocates for the first respondent and the other respondents being *ex-parte* and having a *cau* over to this day for consideration, the Tribunal delivered the following.

JUDGMENT

The petitioner Sri A. S. S. S. Sankara Pandia Nadar was a candidate for election to the Legislative Assembly, Madras State from the Virudhunagar Constituency. The respondents were the other duly nominated candidates. Respondents 4 and 5 who were added as parties as per order on C.M.P. No. 2 of 1952 withdrew before the election. The contest was between the petitioner and respondents 1 to 3. The election took place on 5th January 1952 and the 1st respondent secured 22,811 votes while the petitioner obtained 22,307 votes. The other candidates got considerably less number of votes and the 1st respondent was declared the duly returned candidate. The present petition is one under Sections 81 to 84 of the Representation of the People Act, 1951, for a declaration that the election of the 1st respondent is void. It contains, besides others, the usual allegations of bribery and false personation but does not pray for the seat.

2. The grounds upon which the petitioner seeks that it may be determined that the election of the 1st respondent is void, range themselves under eight headings, namely :—

- (a) Disqualification for membership of the State Legislature under Section 7(d) of the Representation of the People Act, 1951 (hereinafter referred to as the Act) read with Section 9(2) of the Act consequent on the 1st respondent having a share or interest in a contract for the performance of services undertaken by the Government of the State of Madras (Paragraphs 7 to 13 of the petition) ;
- (b) Bribery of the Roman Catholic voters of Virudhunagar Town (Paragraph 16 and List No. I) ;
- (c) Bribery (offer of bribe) of the voters of Kumralingapuram [Paragraph 16 and List No. I(b)] ;
- (d) False personation by one Subbiah, a polling agent of the 1st respondent (Paragraph 17 and List No. II) ;
- (e) Tampering of the ballot box at polling station No. 165 by one Amanulla (Paragraphs 19 and 20) ;
- (f) Irregularities on the part of the Returning Officer at the time of counting (Paragraph 21) ;
- (g) Tampering with the ballot boxes at various polling booths more particularly at Booths 1 and 2 of Polling Station No. 155 (Periaperali) and at Polling Station No. 156 (Alagiyanallur). (Paragraph 22) ;
- (h) Irregularities on the part of the Presiding Officers of Polling Station No. 172 Mallankinar and Polling Station No. 151 Kambikudi (Paragraph 23 and List No. III).

The plea is that by reason of the above irregularities (e) to (h) the result of the election has been materially affected and the election of the 1st respondent has to be declared void under Section 100 (2)(c) of the Act.

3. The 1st respondent contends that he had no subsisting interest or share in a contract of the nature specified in Section 7(d) of the Act on the relevant date (20-11-1951 the date of nomination) and that therefore the disqualification under the said Section does not attach itself to him. He denies the alleged corrupt practices, tampering of ballot boxes and irregularities on the part of the officers concerned. The officers whose conduct or procedure at or during the election are the subject matter of attack in the petition have, except one who could not be served, filed their answers to the allegations against them. They deny the same and state that they have correctly followed the procedure regulating the conduct of elections. Sri M. S. Ram, the Returning Officer, has besides traversing the allegations, entered into a discussion of the Rules and the law bearing on the matter and defended his decision accepting the nomination of the 1st respondent to which objection was taken even at the time of the scrutiny of the nomination papers and prays that the petition may be dismissed with costs.

4. After hearing the advocates on both sides, the following issues which arise on the pleadings were framed by the Tribunal :

- (1) Whether the first respondent was disqualified under Section 7(d) of the Representation of the People Act, 1951 ?
- (2) Whether the 1st respondent's connection with the contracts referred to in the petition ceased with effect from 15-11-1951 ?
- (3) Whether the 1st respondent was guilty of corrupt practices mentioned in lists I and I(b) ?
- (4) Whether they were committed with the sanction or connivance of the 1st respondent or his election agent ?
- (5) Whether the 1st respondent or his election agent was guilty of conniving at false personation as alleged in list No. II ?
- (6) Whether the irregularities mentioned in list No. III are true ?
- (7) Whether the violation of the rules alleged in paragraph 19 of the petition is true ?

(8) Whether the result of the election has been materially affected by all or any of the said illegalities and irregularities?

(9) To what relief, if any, is the petitioner entitled?

5. Though the petitioner adduced evidence in respect of all the matters alleged in the petition, Sri Harihara Ayyar, the learned advocate for the petitioner did not during arguments press the contentions forming the subject matter of grounds (f) and (g) *supra*. It therefore becomes unnecessary to enter into a detailed discussion of the evidence bearing on the same. Suffice it to say that no irregularities on the part of the Returning Officer, much less of a character that would affect the declaration of the result by him, have been made out on the evidence in this case. As regards the alleged tampering of the ballot boxes at Periaperalai and Alagiyamallur, the allegations in the petition are based mainly on the discrepancies between Form No. 10 returns and the actual number of ballot papers found in the boxes. An examination of the relevant records revealed that there was really nothing wrong with the voting in those stations. The clerical errors and the inaccurate preparation of the returns, it was, that gave rise to a suspicion of a surreptitious introduction of ballot papers and this, on a scrutiny, has been found to be unreal.

6. We shall now proceed to discuss the evidence bearing on the other charges. The weightiest and the most important one is the alleged disqualification on account of the interest in Government contracts and it will be convenient to take it up first and dispose of it. Before referring to the evidence relating to that question it is necessary to set out a few facts to understand the respective contentions of the parties. The 1st respondent Sri V. V. Ramaswami is the *Karta* (Manager) of a joint Hindu family consisting of himself, his two adult sons Sri R. T. Rajan and Sri R. Jayakar and his minor son Sri R. R. Sekharan. The family carried on wholesale business in foodgrains and groceries at Virudhunagar in the name and style V. V. Ramaswami and Sons. There was also a partnership business at Madras and Bombay in which the said joint family had a share. On 20-2-1950 under Ex. B-21 the four members of the family decided to carry on their joint family business as a partnership business. The primary object of this step was of course to reduce their liability to income-tax. The name of the new partnership firm was however the same as the old joint family firm namely V. V. Ramaswami and Sons. The firm entered into various contracts with the Government relating to foodgrains and food stuffs the scope, nature and the subsisting character of which on the relevant date (20-11-1951) the date of the nomination as per Section 100(I)(c) of the Act, is the subject matter of a good deal of controversy between the parties in the present case. The petitioner would allege that four such contracts had been entered into between V. V. Ramaswami and Sons and the Government of Madras and that they were in force on 20-11-1951. They are referred to as Exs. A, B, C and D in the petition. The petitioner's case is that the 1st respondent has a share or interest in the said contracts, that they come within the mischief of Section 7 (d) of the Act and that the 1st respondent is therefore disqualified from being chosen as a member of the Madras State Legislature. The 1st respondent denies that any such contract was subsisting on the relevant date and that in any event he had no interest therein after 15-11-1951 since he had relinquished all his interest in the partnership by a deed dated 15-11-1951, Ex. B-31. His further plea is that the alleged contracts do not fall within the category of those mentioned in Section 7(d) as imposing a disqualification. The petitioner's answer is therefore; first that the business continued to belong to and was carried on by the joint family even after 20-2-1950 and that it assumed the cloak of a partnership only to evade income-tax. If such were the case the alleged retirement of the 1st respondent on 15-11-1951 would be of no avail because under Section 9(2) of the Act of the 1st respondent would still be subject to the disqualification. Section 9(2) declares "For the avoidance of doubt it is hereby declared that where any such contract as is referred to in clause (d) of Section 7, has been entered into by or on behalf of a Hindu undivided family and the appropriate Government, every member of that family shall become subject to the disqualification mentioned in the said clause ;.....". The second answer is that even assuming that the business was not a joint family business after Ex. B-21 dated 20-2-1950 and was a partnership business the retirement of the 1st respondent from that partnership under Ex. B-31 dated 15-11-1951 was sham; the third answer is that even if Ex. B-31 dated 15-11-1951 was intended to be real, it will not suffice in law to remove the disqualification arising under Section 7(d), for reasons to be discussed later.

7. Section 7 (d), the disqualifying sub-section on which reliance is placed on behalf of the petitioner is in the following terms : "A person shall be disqualified for being chosen as and for being a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State—

(d) if, whether by himself or by any person or body of persons in trust for him or for his benefit or on his account, he has any share or interest in a contract for the supply of goods to or for the execution of any works or the performance of any services undertaken by, the appropriate Government". To bring the case within that sub-section and to entitle the petitioner to succeed, he must establish three things :

(1) that the 1st respondent had a share or interest in the contract, either directly or indirectly;

(2) that the contract is of the nature specified ; and

(3) that the contract was with the appropriate Government -- here the Government of the State of Madras. There is no dispute in the present case that the contract if made out is with the appropriate Government.

8. The questions on the answers to which depends the ultimate decision as to disqualification are three in number and may be postulated thus :

- (i) Did Messrs. V. V. Ramaswami & Sons enter into any contracts with the Government and were they subsisting on the date of nomination ?
- (ii) Are the said contracts of the nature specified in Section 7(d) of the Act ?
- (iii) Had the 1st respondent any share or interest therein ?

The third question involves three subsidiary matters *viz.*, (a) whether even after Ex. B-21 dated 20-2-1950 the business continued to belong to the joint family and whether the 1st respondent would be disqualified by virtue of Section 9(2), (b) whether the relinquishment of his interest by the 1st respondent in the firm of V. V. Ramaswami & Sons evidenced by Ex. B-31 is sham and not intended to be acted upon and (c) whether even if real it will not suffice to extinguish his interest in the contract.

9. We shall now proceed to discuss the above questions in their order. Four contracts were according to the petitioner, entered into by the firm of V. V. Ramaswami & Sons with the Government and subsisting on the date of nomination. The details of these are to be found in paragraph 9 of the petition and the several types of the agreements executed by the firm are set out in Exs. A to D at the end of the petition. The first of these is the Stock-holder's agreement by which the firm has agreed to hold the reserve grain stock of the Government of Madras, safely store the grains on behalf of the Government and dispose of the same according to the directions of the Government subject to the terms and conditions set out in the agreement. Paragraph 4 of the objection statement of the 1st respondent contains his answer to this averment. It admits the execution of the agreement but it is pleaded that it related but to 200 tons of foodgrains (during evidence this is mentioned as 300 tons) and that the said quantity having been sold and exhausted even before 15-11-1951 it had ceased to be in force on that date. The petitioner summoned the Collector of Ramanathapuram to produce the agreement executed by the firm on 8-3-1951 and Ex. B-27 was accordingly produced. It purports to be an agreement made between the Governor of Madras on the one part and the firm of V. V. Ramaswami & Sons on the other. It has been signed on behalf of the firm only and objection is taken, during arguments, that it is not a valid and enforceable document, as it is not executed by or on behalf of the Governor as required by the Constitution of India. It is not necessary to go into the merits of this contention in the present case. Firstly, the plea is not open to the 1st respondent as he has admitted the execution of the agreement of the type of Ex. A in the pleadings and it was therefore not necessary for the petitioner to adduce proof of it. For aught we know there might be some other agreement in existence signed by both parties and if objection had been taken even at the outset the petitioner could have insisted on its production by the Government. Secondly, the absence of a formal contract on which alone the firm could sue is not a matter of any consequence for the present purpose. For it has been held in England that it is quite immaterial that the contract between the member and his council is one upon which he could not sue in consequence of its not being under seal (See page 16 of Arnold's Municipal Corporations—Sixth Edition).

10. We shall now turn to the other contentions of the 1st respondent with regard to Ex. B-27. Ex. B-28 is the proceedings of the Collector of Ramanathapuram dated 5-3-1951 under which a stock of 500 tons of rice was allotted to V. V. Ramaswami & Sons amongst others and the allottees were directed to execute an agreement immediately. The 1st respondent says that he took delivery of but 300 tons and that the entire stock was exhausted long before 15-11-1951 as Ex. B-29 the 'State Reserve' Stock Register shows. His plea is that Ex. B-27 had spent itself before the day of nomination and was no longer in force. Though the allotment under Ex. B-28 might have been the occasion for, and necessitated the immediate execution of, Ex. B-27, there is nothing to show that it was restricted to the particular allotment. As a wholesaler with whom the Government had agreed to keep a portion of its reserve, the firm had to execute the agreement to cover this and other allotments that might be made. The language of the document is wide and general. Clause 10 of Ex. B-27 which provides for the termination of the contract at the instance of either party by notice is a sure pointer that it is a continuing contract. We have therefore no hesitation in coming to the conclusion that on the date of nomination there was a stock-holder's agreement valid and subsisting between the firm and the Government, of the type of Ex. B-27. It may be added, that even if Ex. B-27 related to but one allotment and that allotment had been disposed of, still the accounts between the parties had not been settled and the obligations of the firm under the contract were not at an end on the date of nomination, as will be shown later.

11. Ex. B to the petition is the second type of agreement alleged to have been entered into by the firm with the Government. It relates to the storage and sale of imported or imported and converted foodgrains. Wheat and milo and even paddy at times would come under the former category and maida would come under the second category. In his written statement the 1st respondent merely stated that he did not remember whether the firm had executed any such agreement. The petitioner summoned the Collector of Ramanathapuram to produce the agreement executed between the Government and the firm as agents of imported and converted goods.

in or about September 1951 (see item 2 of the summons Ex. B-55). The Collector in his reply Ex. B-54, dated 5-1-1953, to the summons, stated that "no such agreement was executed as he was not an importer of converted goods". The petitioner, however, tried again in the Collector's office and was able to get an agreement of this type which was executed on 5-9-1948. It is marked as Ex. A-55. It was signed by the 1st respondent on behalf of the firm V. V. Ramaswami & Sons. It does not purport to be for any limited period.

This Ex. A-55 was produced into Court on 23-2-1953. In his evidence in chief examination given by the 1st respondent on 23-2-1953, he slightly modified his stand in the written statement by admitting that it was possible he had executed such an agreement in 1949 (this concession was evidently because of the production of Ex. A-55). He, however, reiterated that he did not remember to have executed any such agreement in later years and that such an agreement would hold good only for one year and he was positive that he did not receive any stock of imported or converted foodgrains in 1950 or 1951 or 1952. That, however, is belied by the documentary evidence. Exs. A-74 and A-77 to A-85 show that allotments of wheat, milo and maida were made to the firm during the period March 1951 to September 1951. They also find a place in the firm's account Ex. B-41. In fact, the 1st respondent himself later admitted (see paragraphs 4 and 28 of his evidence) that on 15-11-1951 he had stocks of milo, wheat, paddy and rice belonging to the Government. He could not, however, say off-hand to which agreement or agreements those stocks related. That could, however, be ascertained from the registers available in his shop, but only one such register Ex. B-29 was filed which, however, related only to paddy. It is a matter within his personal knowledge and the burden is upon him under Section 106 of the Evidence Act to explain under what agreement these stocks were allotted. It will be observed that so far as wheat, milo and maida are concerned their allotment is referable only to an agreement of the type of Ex. A-55 (as Ex. B to the petition), since the other three agreements marked as Exs. A, C and D to the petition do not relate to imported and converted foodgrains like maida or even to imported foodgrains like wheat and milo. The petition alleged that on 20-11-1951 the firm was in possession of 1,800 bags of milo, 840 bags of wheat and 1,700 bags of paddy on Government account under one or other of the agreements, Exs. A, B, C and D. In the counter the 1st respondent merely disputed the quantities as exaggerated but did not say under what agreement these stocks were being held. In the course of arguments, Sri A. Lakshminarayana Ayyar, the learned counsel for the 1st respondent, faintly urged that from the mere fact of allotment of wheat, milo and maida in 1951 we could not conclude that the allotments must have been made only in pursuance of an agreement and that possibly the allotments were made because the firm was a licence-holder without there being any contract. This, however, was a new case put forth only at the time of arguments and was not set up in the pleadings or even during the evidence of the 1st respondent. In fact, Ex. B-46, the proceedings of the Collector, implies that all the allotments including the allotments of imported or imported and converted foodgrains were made only in pursuance of an agreement and it will be seen that the 1st respondent's evidence itself implies that the allotments were made only in pursuance of some agreement. It may be, as stated by the Collector in Ex. B-54, his reply to the summons, that no such agreement was executed in 1951 itself, but that is immaterial. What is material is that allotments of imported or imported and converted foodgrains were made during March 1951 to September 1951 and these could have been made only in pursuance of some outstanding agreement. In fact, there is even reason to think that the allotments were made under Ex. A-55 itself because, as we have said, it was not for any definite period. It would be further clear from the correspondence marked as Exs. A-59 to A-72 that the final outstandings and accounts between the firm and the Government were settled only in 1952 long after the nomination and the election. The significance of this will be apparent later.

12. The third of the agreements is what is known as the quota-holder's agreement and Ex. C in the petition is a specimen of that agreement. It relates to rice and paddy only and under it the quota-holder agrees to pay the Government the difference between the landed costs and the market price obtaining in the Ramanathapuram district (the market price being higher). No such written agreement is available in the present case. But the 1st respondent has not in his objection statement denied the execution of such an agreement though in his evidence he would say that he does not remember to have executed such an agreement in 1950 or 1951. Admittedly allotments of rice were made to the firm even during 1951 as will appear from Exs. A-73, A-75, A-76 and A-86, the proceedings of the Collector. The last of the allotments was on 3-10-1951 and they were all made to the firm in its capacity of quota-holder. There are entries at page 204 of Ex. B-26 and page 230 of Ex. B-41, the ledgers of the firm relating to the remittance of sums of Rs. 339-9-0 and Rs. 1,724-11-9 on 4-7-1950 and 5-12-1951 respectively. These amounts represent the difference between the landed cost and the local market price of rice. Such payments should have been made only in pursuance of an obligation undertaken by the firm and it is not too much to conclude that the firm must have executed a quota-holder's agreement of the nature of Ex. C even for 1951, though no direct evidence is forthcoming on this point.

13. The last of the contracts referred to as Ex. D in the petition is that which is to be executed by authorised wholesale procuring agents. The case of the petitioner is that V. V. Ramaswami & Sons were one such procuring agent and that therefore an agreement of that kind should have been executed by the firm. All that the 1st respondent contends in the counter is that there was no procurement in Ramanathapuram district from about May 1951 as Ex. R-30, the Madras Foodgrains (Intensive Procurement) Order, 1951 did not apply to that district. In his evidence he adds that

he does not remember to have executed any such agreement. The contention that the Madras Foodgrains (Intensive Procurement) Order, 1951 did not extend to Ramanathapuram district has not much bearing on the matter as the procurement was in the surplus district of Tanjore. Ex. A-56, an agreement executed by the firm relating to the purchase, storage and distribution of notified foodgrains under the Intensive Procurement Order is of date 15-2-1949 and *ex facie* purports to be for fasli 1358 only (1948-49). There is no documentary evidence that any similar agreement was executed in 1950 or 1951 and was in force on the date of nomination. But Ex. A-67, the report of the Rationing Officer to the Collector, shows that procurement was done by the firm during the years 1949 and 1950, and statements in respect of them furnished by the firm in 1952 and accepted. It is fairly deducible from this that for the year 1950 also there must have been an agreement similar to Ex. A-56 and that the obligations arising thereunder were not completely worked out till about the middle of 1952.

14. We shall now pass on to the next question : whether the contracts are of such a nature as to entail disqualification. Though in one portion of the petition (*vide* paragraph 10) it is stated that the contracts are both for the supply of goods to and for the performance of services undertaken by the Government of Madras it is now urged that the contracts fall within the scope of Section 7(d) of the Act only because they are for the performance of services undertaken by the Government of Madras. It is well known and the matter is not controverted—that owing to the shortage of rice and other foodgrains both during the war and subsequently the Government assumed large powers with regard to the production, supply, transport and distribution of foodgrain and introduced statutory rationing and interested itself in undertakings in furtherance of the aforesaid purposes. The Essential Supplies (Temporary Powers) Act, 1946 and the various foodgrain control orders passed under it gave the necessary powers to the Government in that behalf. It is contended on behalf of the 1st respondent is that though the contracts may relate to performance of services voluntarily assumed by the Government it cannot be said that the services were undertaken by the Government. Stress is laid on the word "undertaken" found in Section 7 (d) and it is urged that "undertaking" connotes a statutory or enforceable obligation on the part of the Government and so long as the Government was not bound in law or under the provisions of any enactment to perform the services of the nature referred to, the Government cannot be said to have undertaken those services. We are unable to agree. This is to put too narrow a construction on the word 'undertaken', and to add words which are not to be found in the Section. The observations of McCardle J, in *Leck v. Epsom Rural District Council (1K922) I.B. 383* where the question arose whether the local authority had undertaken the work of cleansing cess pools are very pertinent in this connection. He says "By the word 'undertook' I understand that they either expressly resolved to do the thing mentioned in the section or in practice so acted as to show that they had resolved to do it". It is obvious that a person might undertake to do a thing though he may be under no legal obligation to do it, and nowhere can this be more true than in the case of a Government which indeed from its sovereign nature cannot be compelled legally to take up any task but which increasingly takes upon itself services to the society. The argument of the 1st respondent, if accepted, would reduce a material part of Section 7 (d) to a dead letter. It is clear that the services represented by the contracts in the present case *viz.*, procurement, supply and distribution of foodgrains and foodstuffs were "undertaken" by the Government of Madras within the meaning of Section 7(d) of the Act and a person having a share or interest in the said contracts would be disqualified from being chosen as a member of the State Legislature.

15. This leads us on to the last and remaining question in this branch of the case whether the 1st respondent had any share or interest in the said contract on 20-11-1951. The contentions of the parties on this point have already been set out and as indicated it raises three subsidiary questions the first of which is whether even after Ex. B-21 dated 20-2-1950 the business continued as that of the joint family and whether the 1st respondent was disqualified on that account by virtue of Section 9(2) of the Act. Ex. B-21, the deed of partnership between the 1st respondent and his sons recites that on and from the 1st of *Hasi Virothi* (12-2-1950) the business which was till then carried on by the joint family will be continued as a partnership, each of the partners contributing a share capital of Rs. 15,000/- At page 363 of Ex. B-25, are to be found credits in the name of each of the partners of the amount of share capital contributed by them. It is conceded by the learned advocate for the petitioner that in law it is possible for all the coparceners of a joint Hindu family to constitute themselves into a partnership and to continue as partners the business formerly carried on by them as members of a joint Hindu family. He would only contend that in fact it was not done and points to three circumstances in support of his contention. The share capital of each of the partners has been contributed from out of the joint family funds only and has been found by debiting the joint family account in the books of the business and crediting the individual members with a corresponding amount to enable them to contribute towards the share capital (See pages 3, 9 and 4 of Ex. B-25). At the time when these adjustments were made the joint family had overdrawn to the extent of over Rs. 90,000/- from the business. This, it is urged, exposes the unreal character of the change over. There is nothing in the procedure adopted to indicate that the partnership was not a real one. Though the joint family was heavily indebted to the business, there is nothing to prevent further advances being made for the purpose of finding the share capital and it is again not necessary that the share capital should be contributed in cash and not by book adjustments. That the assets and liabilities of the business as they stood on the date of the conversion were not actually divided is again not a circumstance against the reality of the partnership.

Though the status had been changed, yet the actual shares of the individual members in the business did not undergo any variation and there was therefore no need for a division of the assets and liabilities. That the minor was also debited with a share of the losses (see for instance page 12 of Ex. B-39), would not again support the contention of the petitioner. It might be that the minor is not liable for the losses of the partnership and the debit might be open to question by him. But the debit of the minor's share of the losses in the accounts is not consistent with the theory of the business being a joint family one for in the case of a joint family business there can be no division of the loss or profits between the various coparceners. The loss or profits will have to be borne by or taken over to the joint family as a whole. On the other hand, there are several circumstances which indicate that the partnership was a genuine affair. It was certainly to the interest of the 1st respondent and his sons to convert the business into a partnership to avoid the heavy incidence of income-tax. Even on 23-2-1950 the 1st respondent wrote the letter Ex. B-22 to the Income Tax Officer intimating the partnership and this has in effect been recognised by him in Ex. B-23 on 22-5-1951 as the partnership came into being only during the accounting year 1950-51. The income-tax returns also were submitted on that footing. The Registrar of Firms was informed about the partnership and Ex. B-24 is his acknowledgement of the registration of the firm. The profits of the year ending with *Vikruthi Thai* 30 (12-2-1951) were divided and carried to the individual partner's accounts (*vide* the entries at pages 7 to 10 of Ex. B-26). Transactions have been entered into with third parties on the basis of a partnership thus making the adult sons of the 1st respondent also personally liable (see e.g., Ex. A-32 dated 17-10-1951, the letter of the firm to the Indian Bank Ltd., Virudhunagar). It is thus abundantly clear that the business became a partnership one with effect from 12-2-1950. We are not unmindful of the recital in Ex. A-54 that the business is being conducted on behalf of the family. That is evidently due to a certain looseness of expression and is probably accounted for by the fact that all the members of the family had an interest in the partnership. We may add that there is no distinct averment in the petition that the partnership was not a genuine one. It has only to be inferred from the reference to Section 9(2).

16. The second subsidiary question is whether the retirement of the 1st respondent from the partnership on 15-11-1951 was not real. Ex. B-31 is the registered deed of relinquishment executed by the 1st respondent in favour of the other partners. It was admittedly executed on the eve of the nomination, according to the 1st respondent, *ex abundanti cautela* to enable him to stand for the election. There is nothing wrong about the 1st respondent trying to rid himself of a possible disqualification and the only question is whether Ex. B-31 was intended to be acted upon. The 1st respondent relies on certain pieces of conduct on his and the other partner's part to show that the relinquishment was real and was acted upon. Ex. B-32 and Ex. B-32 (a) are the copies of letters written by Sri R.T. Rajan to the Registrar of Firms on 15-11-1951 intimating the change in the firm. Ex. B-34(a) is the memorandum of the Registrar intimating that the notice of the change in the constitution of the firm had been filed in pursuance of the Indian Partnership Act. Ex. A-35 is the office copy of the letter dated 17-11-1951 written by Sri R.T. Rajan to the Collector of Ramanathapuram informing the latter that the 1st respondent had relinquished his share in the partnership. Ex. B-37 and B-38 are respectively the notices published in the Tamil Nad Newspaper and the Fort St. George Gazette informing the public that the 1st respondent had ceased to be a partner. As will appear from page 3 of Ex. B-39 interest has been calculated on the sum of Rs. 15,000/- (the original share capital of the 1st respondent) from 15-11-1951 to 12-2-1952 and credited in his accounts. His share of the loss up to 15-11-1951 only has been debited against him, though the figure has been arrived at by calculating the loss for the entire year and then ascertaining the proportionate loss for the period till 15-11-1951. Though all this has been done, there is no doubt in our minds that the retirement was not real. On the very next day after Ex. B-31, the 1st respondent has along with his sons executed Ex. A-34 an instrument of pledge of goods in favour of the Indian Bank acting on behalf of the firm and describing himself as a partner. The firm was granted a key loan of two lakhs and an open loan of Rs. 50,000/-. In respect of the key loan a promissory note was executed by the 1st respondent along with the other partners. This is spoken to by P.W.9, Sri Ardharnari, the Agent of the Indian Bank, Virudhunagar Branch and is referred to in Ex. A-34 itself. During the cross-examination of P.W.9, the execution of the promissory note on 16-11-1951 for two lakhs was admitted but some suggestions were made, which were denied by the witness, to explain away its effect. The 1st respondent would deny from the witness box the execution of the promissory note by him. That incidentally shows that the 1st respondent has not much regard for truth and no great reliance can be placed on his testimony. P.W.9, the agent, says further that for the open loan of Rs. 50,000/- a promissory note was executed on 21-11-1951 by the 1st respondent also. The 1st respondent would deny this. According to P.W.9, the two promissory notes had been returned as they had been discharged and the promissory notes must be with the firm. There was no cross-examination of P.W.9 on this point. The promissory notes have not been produced and we have no hesitation in concluding that the 1st respondent did along with the other partners execute promissory notes in favour of the Indian Bank on 16-11-1951 and 21-11-1951. In Ex. A-34 the 1st respondent has described himself as a partner and acted on behalf of the firm as such. Why should the 1st respondent join in the execution of the documents if he was not a partner and describe himself as such? The 1st respondent would state that he phoned to P.W.9 on 16-11-1951 that he had ceased to be a partner and could not therefore join in the execution of the document, that P.W.9 replied that unless he joined in the execution immediate credit facilities could not be arranged

for the firm and that he (P. W. 9) would hold the document as a security only and that therefore he was led to join in the execution of Ex. A-34. P. W. 9 denies the phone conversation and that he insisted on the 1st respondent joining in the execution of the documents notwithstanding his retirement from the partnership. The explanation of the 1st respondent is quite unconvincing. He need not have described himself as a partner if he was not such and he could well have executed Ex. A-34 as a surety. That would have safeguarded his position while at the same time guaranteeing the prompt repayment of the loan to the Bank by him also. The alleged assurance of P. W. 9 was purely verbal and the 1st respondent did not take any document from P. W. 9 to evidence that. In the letter to the Bank Ex. A-32, the 1st respondent and his sons undertook expressly to give notice in writing to the Bank of any change in the firm; and this admittedly has not been done. The Bank carried on its transactions with the firm on the basis that the 1st respondent continued to be a partner. We have no hesitation in preferring the testimony of P. W. 9, a disinterested witness to that of the 1st respondent on the point.

17. There is next the fact that in Ex. A-54, the copy of the sale deed executed by the 1st respondent in favour of his nephew on 14-5-1952 it is mentioned that the business is conducted on behalf of the family. Further, the sale is for the discharge of the debts of the firm and not for the discharge of the debts which the joint family owed to the firm. It is therefore made out that the 1st respondent had a subsisting interest in the firm and that was the reason why he sold the properties to discharge the debts of the firm.

18. There is yet another circumstance which points in the same direction. If the 1st respondent really went out of the partnership, one would expect a settlement of its accounts, the ascertainment of the 1st respondent's share of the assets and liabilities and the payment thereof to the party entitled. Even if the assets and liabilities were equal, as 1st respondent would suggest in his evidence, and nothing would be due to or from him, still the accounts would have to be looked into and a balance sheet drawn up to find out whether it was really so. That this was not done affords some indication that the interest of the 1st respondent in the partnership did not cease.

19. In view of our above findings it follows that the 1st respondent had a subsisting share and interest, on the date of nomination, in contracts for the performance of services undertaken by the Madras Government and is therefore disqualified for being chosen as a member of the State Legislature.

20. Even if the relinquishment of his interest in the partnership by the 1st respondent were true, still the same results would follow. The arrangement evidenced by Ex. B-31 was one between the partners *inter se* and was not made with the concurrence of the State Government. The Collector accepted it only on 1-10-1952 by his proceedings Ex. B-46. In response to the letter of the 1st respondent Ex. B-47 dated 29-10-1952 that the date of relinquishment may be specified, the Collector by his Proceedings of even date Ex. B-36 accepted the relinquishment with effect from 15-11-1951. All this happened long after the date of the presentation of the election petition. Before accepting the relinquishment, the Collector desired to know whether the new firm was willing to accept the obligations of the old firm (see Ex. A-59 dated 16-2-1952) and the new firm by its letter Ex. A-60 undertook to be so liable. Ex. A-62, the letter of the Collector to the Government shows that as a result of the checking of the accounts by the Statistical Assistant, some amounts were found due from the firm in its capacity of wholesaler and these amounts were remitted into the Treasury on 15-3-1952. The firm was further called upon to submit statements with regard to their procurement up to 31-12-1950 and the quantity of grain received by way of import quotas etc. (see Ex. A-63). The accounts were checked and a scrutiny by the Rationing Officer revealed that an excess collection of Rs. 5-5-1 had to be remitted by the old firm. This is found in Ex. A-67 the report of the Rationing Officer. It was after all this that the Collector passed the proceedings Ex. B-46, accepting the relinquishment. It is thus seen that on the date of the nomination, the accounts had not been looked into and finally settled, that the obligation of the old firm under the contracts executed by it subsisted and that subsequently on a scrutiny of the accounts moneys were found due from the old firm, and were accordingly paid.

In the above state of things, can it be said that the 1st respondent ceased to have any interest in the contracts by reason of his execution of Ex. B-31 and his retirement from the partnership in pursuance thereof, assuming that to be true? The answer can only be in the negative. Sri A. Lakshminarayana Ayyar appearing for the 1st respondent contends that by his own unilateral act the 1st respondent's interest in the contracts came to be determined. This is certainly not right since so far as third parties are concerned his obligations cannot cease except with their concurrence and assent. If authority were needed, reference may be made to *Cox v Ambrose* (60 Law Journal Queen's Bench Division 114). That was a case of a disqualification arising under Section 12 of the Municipal Corporation Act, 1882 (45 and 46 Vict., C. 50). In that case the candidate was a member of a firm interested in certain continuing contracts with a corporation of a borough unexpired at the time of a municipal election for that borough. Before offering himself as a candidate for election he dissolved the partnership and assigned all his interest in the said contracts to the other partner, remaining liable, however, on bonds securing the due performance of the contracts. The corporation was not a party to the assignment and gave no assent thereto, nor did they release the candidate from the contracts. It was held that he was not qualified to be elected within the meaning of the above section.

21. The question next arises whether the acceptance of the relinquishment by the Collector under Ex. B-36 with effect from 15-11-1951 makes any difference. *Ford v. Newth* (1901-I, K. B. 683) is a clear authority that it does not. The facts of that case are analogous to the present one. The respondent in that case had entered into a contract with the Gloucester Corporation and on October 19, 1900 there were various amounts due to him under the contract. On that day the respondent being anxious to stand as a candidate at the forthcoming election of councillors in November applied to a committee of the corporation to be relieved from his contract. The Committee resolved on the same day to so release him subject to the approval of the Council. On 24th October 1900 the respondent was nominated and on the 30th October the Council approved the resolution of the Committee. The election was held in November 1, 1900 and the respondent was declared to be elected to the office of councillor. It was held that the ratification, after the respondent's nomination, of the resolution releasing him did not relate back to the date of the resolution of the Committee and that therefore the respondent, at the date of his nomination, had an interest in a contract with the Council and was disqualified and that his election was void. The reason given is that election is a matter of public concern, that on the day of nomination it was entirely uncertain whether the contract would be put an end to or not and that it was not open to the council to put an end to the contract so as to affect the rights of electors or of other candidates. In view of the above pronouncement of the law, which we respectfully adopt, it must be held that Ex. B-36 cannot operate retrospectively so as to prejudice the rights of third parties and cannot avail to remove the bar of disqualification which would otherwise attach to the 1st respondent. The cases of *Maidstone* (1831) and *Dartmouth* (1845), B. & Arn. 460 referred to at pages 31 and 32 of Rogers on Elections, Volume II, 19th Edition, may at first sight appear to be against the above view. But a closer examination of the facts will reveal that it is not so. In the Maidstone case the assignment was with the consent of the Navy Board and the only contention was that the assignor was still liable for the due execution of the contract by the assignee. The contention on the other side was that after assignment, the assignor was only liable as a surety and that surties were not within the Act. It was held that the assignor was not disqualified. In the Dartmouth Case the candidate made an assignment of the contracts to his nephews a few days before the election and was accordingly released therefrom by the Admiralty. It was decided that as the contract had been substantially assigned before the election with the consent of the Admiralty, though the assignment had not been formally completed, the assignor was not a contractor within the Statute. It will be noticed that in both the above cases the assignment was before the material date and with the concurrence of the Government authorities. Those cases do not therefore lay down anything to the contrary.

22. The matter may be looked at from another standpoint. There were outstanding obligations under the contracts on the part of the firm including the 1st respondent, on the date of the nomination. Can it be said in those circumstances that the 1st respondent was not interested in the contracts? It is a moot point whether a person who has performed his part of the contract can be said to remain interested because he has not received payment. Some cases have taken the view that the disqualification arises only when the contract is executory and not when the contract has been completely executed before the election and all that remains to be done is for the Government to pay the money. [See *Rayse v. Birley* (1869) L. R. 4 C.P. 296; *Cox v. Truscott* (1905) 69 J. P. 174]. On the other hand, in a carefully reasoned judgment the Irish Court of Appeal has held in *O'Carroll v. Hastings* (1905) 2 I. R. 590 that a person's interest in a contract executed by him only determines when he is paid for it or possibly when a chance of a dispute arises as to the amount due has been determined by a judgment or arbitrator's award or the like. Whichever be the correct view where the only thing that remains is an outstanding liability on the part of the Government, it does not admit of any doubt that a person who has not yet completely performed his obligations under the contract is interested in it. The object behind the provisions like those enacted in Section 7(d) is to prevent the conflict between interest and duty that might otherwise inevitably arise. The mischief guarded against is the sapping of that freedom and independence by members being admitted to profitable contracts. To hold that a person who has not fully performed his obligations under a contract is still not interested in it within the meaning of Section 7(d) would be to let in the very mischief the Act intended to prevent and subject the members of the Legislature to the class of temptations which it was intended to remove. Thus, in the present case the duty of the 1st respondent as an elected representative of the public would require him to protect the revenues of the Government but his self-interest in these contracts would stand in the way of his discharging that duty properly. We would therefore hold that even if the relinquishment were genuine, the 1st respondent continued to be interested in the contracts as his obligations had not terminated.

23. Our conclusion on this part of the case therefore is, that V. V. Ramasami & Sons had entered into contracts with the Government of the State of Madras of the nature specified in Section 7(d) of the Act, that the said contracts and obligations thereunder were subsisting on 20th November, 1951, the date of the nomination, that the business was a partnership one that the relinquishment of his share in the business under Ex. B 31 by the 1st respondent is sham and nominal, that even if it were real still, the 1st respondent had an interest in the contracts on the relevant date and was therefore disqualified under Section 7(d). Issue 1 is found in the affirmative and issue 2 in the negative.

24. We now pass on to the charges of bribery levelled against the 1st respondent. It is alleged that R. W. 6 Sri Shanmugha Nadar, the brother of the 1st respondent met the Roman Catholic voters of Virudhunagar in the local Church on the New Year's Day, 1952 and promised them that the Church walls which remained unplastered for a pretty long time would be plastered by his brother at an expense of Rs. 3,000 and that the voters thereupon agreed to vote solidly for the 1st respondent. This promise was subsequently implemented and the walls have now been plastered. The 1st respondent denies that his brother ever made such a promise or that he met the expenses of the plastering of the Church walls.

25. P. W. 8, Antonimuthu Nadar, is the only witness examined on the side of the petitioner to prove this charge. He says that R. W. 8 came to the Church on the evening of 1st January, 1952, addressed a meeting presided over by R. W. 1, the Parish Priest and agreed on the suggestion of R. W. 6 Susai Michael to have the Church walls plastered at a cost of Rs. 3,000 by the 1st respondent. The voters all agreed to give their votes to the 1st respondent on the assurance given by R. W. 8. This witness has admittedly no properties and ekes out his livelihood as a watchman of the locality where the petitioner's shop is situate. His antecedents again are not quite impressive—he having been concerned in a murder case though ultimately acquitted. It is not right to rely on his solitary testimony and come to an adverse conclusion against the 1st respondent.

26. On the side of the 1st respondent R. W. 1, Rev. Souri Raj, the Parish Priest, R. W. 6 Susai Michael and R. W. 8 Shanmugha Nadar have been examined with regard to this point. They admit the meeting on the evening of 1st January, 1952 and state that there never was a promise of the sort alleged and that the voters assembled there agreed unanimously to give their solid support to the 1st respondent in view of his past services uninfluenced by any other consideration. R. W. 17, the 1st respondent, would deny that any such promise was made on his behalf or that he contributed towards the expenses of the plastering of the Church walls. R. W. 1 would say that the plastering which was done in June and July, 1952 was mainly out of the contribution of Rs. 4,000 made by R. W. 12 Periasami Nadar, the rest of the expenses being met out of foreign donations and the contribution of the Father Superior and he has produced Ex. B. 6, the account book alleged to have been maintained by him with regard to that work. R. W. 12, Periasami Nadar, gives evidence in support and proves Ex. B-17 his day book which contains entries relating to the payment of Rs. 4,000 in three instalments to R. W. 1.

27. It is in the evidence of R. W. 1 that the Church remained unplastered for about fifteen years and that the work could not be done for want of funds though he had been approaching several persons in that behalf during all those years. The work was admittedly done in June and July, 1952, a few months after the election was over. R. W. 1 says that he approached R. W. 12 only in May 1952 that the idea struck him only then and that R. W. 12 immediately agreed to give Rs. 4,000 for the work. R. W. 1 admits that R. W. 12 had not done anything for the Church or for the Catholics till May 1952. How did it suddenly strike R. W. 1 to approach Sri Periasami Nadar, a Hindu, in May 1952 and what is the reason for this outburst of generosity on the part of the latter at this particular juncture? We are left without any explanation and though R. W. 12 might be a charitably minded person and has contributed lavishly to many good causes, the version given by R. W. 1 and R. W. 12 leaves us cold. The suggestion made in the cross-examination of P. W. 8 was that at the request of the Municipal Councillor for the ward in which the Church is situate, R. W. 12 did the plastering, he being the Municipal Chairman and therefore anxious to oblige the Councillor. The evidence of R. W. 1 and R. W. 12 is however different. According to both of them R. W. 1 directly approached R. W. 12 and the latter immediately agreed to pay a sum of Rs. 4,000 to meet the costs of plastering. The sum of Rs. 4,000 was according to both R. W. 1 and R. W. 12 paid in three instalments of Rs. 2,000, Rs. 1,000 and Rs. 1,000. The last two payments were on 11th July, 1952 and 14th July, 1952, respectively and Exs. B-18 and B-19 are the receipts relating thereto. According to R. W. 1, the payment of Rs. 2,000 was on 21st June, 1952 and that is the date found in his accounts. Indeed the work is said to have been begun even on that date. But Ex. B-17, the day book of R. W. 12, mentions the date of that payment as 30th June, 1952 and Periasami Nadar is quite positive that no payment was made by him before that date. Strangely enough the receipt relating to that payment alone is missing. The reason is obvious, for whatever date it bears it would discredit the accounts of one or the other and so the case of the 1st respondent has not been attempted to be supported by the production of a receipt for that payment. It might well be asked whether even if the accounts were spurious, the payment of Rs. 2,000 would not be shown in both the accounts as having been made on the same date. The difficulty appears to have arisen this way. R. W. 1 had already produced Ex. B-6 with the date of the payment of the sum of Rs. 2,000 and the commencement of the work as 21st June, 1952. Ex. B-20, the earlier day book of R. W. 12, contains transactions till 25th June, 1952 and is a big bound volume and could not therefore be easily tempered with. There is therefore force in the suggestion of the learned counsel for the petitioner that the subsequent day book Ex. B-17 which is a small one and contains but 52 pages of written matter has been rewritten and as it was not possible to make any entry as of date 21st June, 1952 an entry has been made on 30th June, 1952 as though a sum of Rs. 2,000 was paid on that date.

28. Besides the above discrepancy with regard to the date of the payment of Rs. 2,000 there are other circumstances which clearly indicate that Exs. B-6 and B-15, the account books produced

by R. W. 1 the Parish Priest, could not be genuine. One has only to read his evidence to conclude that the witness is not speaking the truth and has not hesitated to bring into existence documents to bolster up the case of the 1st respondent. The witness was examined on three dates, first on 19th January, 1953, then on 20th January, 1953 and finally on 31st January, 1953. On 19th January, 1953 he produced Ex. B-6 only, the account book relating to the repairs to the Church though he was not summoned to produce any accounts—and because he admitted the possession of other accounts which would have a bearing on the questions in issue he was asked to produce the same at 11 A.M. the next day and he undertook to do so. But he did not come to Court till 2-30 P.M. on 20th January, 1953 and he produced Ex. B-15, the Church accounts from 1951 onwards—only a portion of the accounts he undertook to produce the other day. It may at this juncture be pointed out that Ex. B-15 begins abruptly on 1st January, 1951 and no amount is shown as carried forward from any earlier account. A casual look at Ex. B-6 and the later pages of Ex. B-15 would show that they have all been written at one sitting and the ink is almost fresh. R. W. 1 would say that the account book Ex. B-6 was purchased in June, 1952 and that its purchase would find a place in the Church accounts as it ought to, if his case were true. But there is no such entry in Ex. B-15. R. W. 1 has again deposed that advances were made from the Church funds for the work of plastering and subsequently recouped and that these would again find a place in the Church accounts. There are absolutely no entries of that sort in Ex. B-15 and when confronted with that he has no acceptable explanation to offer. The balance in the Church repairs account Ex. B-6, the witness admits, was verified and found to tally with the actual cash on hand and was carried over to the general Church account Ex. B-15. If a balance is struck of the debits and credits in Ex. B-6, there is only a cash balance of Rs. 3-8-9 but a sum of Rs. 4-3-9 has been carried over to Ex. B-15 on 17th November, 1952 as the balance in the former account. How could that be if the accounts were genuine and the balance was actually verified before being taken over? It is better to quote his explanation in his own words "The totalling must have been done by an assistant and I did not have the time to verify the cash and the totals". By whomsoever they have been done, there could be no mistake if the accounts were genuine and the cash balance was verified with reference to Ex. B-6 before being taken over to Ex. B-15. In more places than one, the witness asserts that Ex. B-6 was written then and there and that there was no chitta or any other rough account from which it was prepared. Some of the items of expenditure entered on 28th July, 1952 appear to be consolidated ones and at least with regard to one of them, the sum of Rs. 120 representing the cost of paint, the witness had to concede that there was one earlier account from which that entry was made up. No such chittas are forthcoming. Ex. B-15 in its present condition is full of inter-spaces between the stitched forms. The accounts for the year 1952 cover only nine pages (40 to 48) while those of the earlier year are spread over thirty-nine pages. The witness is clear that the transactions in the two years were practically the same. All this leads to the suspicion that Ex. B-15 has in part at least been re-written and then rebound. One other point on which R. W. 1 has given conflicting answers relates to the sum of Rs. 900, the credit entry of date 17th November, 1952 at page 1 of Ex. B-6. This, according to him, represents foreign donations and this was also utilised to meet the cost of plastering the Church walls. On the first day of his examination the witness stated that the amounts which went to make up the sum of Rs. 900 had been entered in the church accounts then and there, that besides that there was an account showing the contributions daterwar, the total of which would show the sum of Rs. 5,500 on 17th November, 1952 conformably to page 1 of Ex. B-6, that the donations ranged over a period of eight years and that subsequent donations received also would find a place there. And the witness undertook to produce the same the next day. On 20th January, 1953 he did not produce any such accounts. He said first that there was no separate list of foreign donors, that such donations would find a place in Ex. B-15, the account book commencing from 1951 and that before 1951 he did not note the donations or particulars of the donors in the accounts. He then said that he may have a slip of paper to show the names of the donors and the amounts and dates of the donation. To a specific question put by the Court whether he had a list which would show the total foreign collections up to 17th November, 1952 as Rs. 900 he replied in the negative. On 31st January, 1953 the witness produced the note book Ex. B-16 in one page of which are entered the particulars of foreign donors. The earliest entry is dated 29th December, 1950. When asked to show the corresponding entries in Ex. B-15, he had to admit that there were none and he stated that Ex. B-15 would only show the total collections without details and that there were other donations besides those noted in Ex. B-15. It is impossible to reconcile all these answers. The accounts stand self-condemned and no reliance can be placed either on them or on the testimony of this witness. We did not at all impress us as a truthful witness. Of the other witnesses who speak to this part of the case on the side of the 1st respondent, R. W. 6 has been dismissed from Government service on account of corruption. R. W. 8 is the brother of the 1st respondent and R. W. 12 was an active worker on behalf of the 1st respondent during the elections (see the evidence of R. W. 6) and was present in Court during several hearings, and according to R. W. 17, came with R. W. 1 to Court. Notwithstanding all these infirmities we feel that there is not enough evidence of a positive character which would warrant a finding that the 1st respondent was guilty of bribery. There may be good room for grave suspicion, but suspicion, as has been repeatedly observed, is no substitute for proof.

29. One other point which deserves notice is the contention advanced on behalf of the petitioner that in the petition presented as early as March 1952 this allegation of bribery finds a place while according to the evidence on the side of the respondent the repairs to the church were not

thought of till May 1952 and that therefore the allegation of the petitioner must be true. It will certainly tend to disprove the version on the 1st respondent's side that the plastering was not thought of till May 1952—a conclusion which we have even otherwise reached—but it will not necessarily follow that the petitioner's version is true. It might well be that there were some talks even before March 1952 and that the petitioner was led to suspect that it was the 1st respondent who was really going to spend for the plastering. In any case, we feel that even giving full weight to this circumstance of the mention of the bribery in the petition in March 1952, it will not carry the matter from the region of grave suspicion to that of proof required in a Court of Law.

30. The other instance of bribery relates to Kumralingapuram. The case of the petitioner on this point rests on very slippery ground. The allegation is that R. W. 9 Natarajan and R. W. 10 Chinnakannu Nadar, the brother-in-law of the 1st respondent, went to Kumralingapuram on 1st January, 1952, met P. Ws. 10 and 11, the two Ramaswami Reddiars, who are influential men of that village, asked them to influence the voters in favour of the 1st respondent, represented that they had the authority of the 1st respondent to pay a sum of Rs. 1,000 for the improvements of the village library, reading room and chavadi and thrust a sum of Rs. 1,000 into the hands of P. W. 10 which he, however, returned as improper. The 1st respondent denies the same. P. Ws. 10 and 11 speak in support of the petitioner's case. R. Ws. 9 and 10 deny that they ever met P. Ws. 10 and 11 and paid or made an offer of Rs. 1,000. P. W. 10 is a tea-shop keeper, occupies no official position in any of the village institutions and does not appear to be an influential person in the village. He himself says that there are elders whom he said he would consult with regard to supporting the candidature of the 1st respondent. There was no particular reason why he should be approached in this behalf. According to him, the money was paid into his hands and he subsequently returned the same. The version spoken to by P. W. 11 is quite different. He would say that P. W. 10 did not receive the money and then return it. It is easy to procure such evidence and we are not prepared to accept and act on it. We would therefore hold that the charges of bribery have not been proved and find issues 3 & 4 in the negative.

31. Issue No. 5.—The next allegation is that Subbiah (R. W. 7), a polling agent of the 1st respondent, who was not entitled to vote, impersonated another Subbiah (P. W. 1), voter No. 118 in Muthuvel Nadar Street, Locality No. 5, and voted by postal ballot in the name of the latter and that in consequence the real voter Subbiah (P. W. 1) had to give a tendered vote. The counter is rather bald on this point but seems to deny that there was another real voter apart from the polling agent of the 1st respondent and that that voter had to tender his vote. Before deciding who is the real voter entitled to vote, a few admitted facts may be noticed. Ex. A-1, the list of voters for locality No. 5 mentions voter No. 118 as 'Subbiah' son of Shanmuga Nadar, aged 22, living in door No. 8 of Muthuvel Nadar Street. R. W. 7 applied for a postal ballot paper for that vote and exercised that vote by postal ballot. Ex. A-12 is his application for the postal ballot paper wherein he gave his address as No. 8, Muthuvel Nadar Street and his serial number in the electoral roll as No. 118. Ex. A-16 is the postal ballot paper wherein also he voted as voter No. 118. Of course, he voted for the 1st respondent. R. W. 7 applied for the postal ballot because he was to be the relief polling agent at booth No. 2 in polling station No. 167. Ex. A-11 is the notice, dated 27th December, 1951, by the 1st respondent to the Returning Officer stating that he had appointed R. W. 7 as the relief polling agent of that booth. That was signed by R. W. 7 also. Therein also the address of R. W. 7 was given as S. Subbiah, son of Shanmuga Nadar, 8, Muthuvel Nadar Street, Vrindavanagar.

32. P. W. 1 was actually residing in No. 8, Muthuvel Nadar Street, at the time of the enumeration and claiming that he was voter No. 118, he went to the polling station to exercise his vote, but he was told that the vote had already been exercised by postal ballot. Therefore he had to tender his vote. Ex. A-49(A) is the tendered vote.

33. The question is who was the voter really entitled to vote: whether it was P. W. 1 or R. W. 7. We have no doubt, on the evidence on record, that the person entitled to vote was P. W. 1 and not R. W. 7. The evidence of P. W. 1 is that at the time of the enumeration which took place in 1949 or so he was living with his parents and brothers in No. 8, Muthuvel Nadar Street, locality No. 5, that they then shifted to No. 14, Gurunathan Koil Street and then to his present residence in door No. 36, T.C. Godown Street. He says that his father is Shanmuga Nadar alias Shanmughavel Nadar and that his age was 22. He thus claims that he answers the description of voter No. 118 in Ex. A-1 correctly. It is also stated by the petitioner that the entry No. 114 relates to P. W. 1's further Shanmughavel Nadar and entry No. 119 relates to Pakkiammal, the mother of P. W. 1. The entry against No. 114 is Shanmughavel Nadar, son of Subbiah Nadar, aged 41, residing in door No. 8. The entry against No. 119 is Pakkiammal wife of Shanmuga Nadar, aged 35, residing in door No. 8. Now, Exs. A-2 to A-7 bear out the contention of P. W. 1 that he was the voter entered as No. 118. Ex. A-2 is the application by his mother Pakkiammal for a ration card when they were living in door No. 8/B, Muthuvel Nadar Street. P. W. 1's name is mentioned as Subbiah and his then age as 21. Ex. A-3 is the intimation by Pakkiammal on 21st September, 1950 intimating her change of residence to No. 14, Gurunathan Koil Street, with effect from 21st September, 1950. Ex. A-4 is another application made by her from No. 14, Gurunathan Koil Street, for adding the name of her new daughter-in-law in the ration card with effect from 29th October, 1950. Exs. A-5(a) and A-5(b),

the entries in the Ration Register maintained by the Rationing Office, also show that the ration card was first issued to her address in 8/B, Muthuvvel Nadar Street and then to her address in No. 14, Gurunathan Koil Street. Ex. A-6 is the kerosene ration card issued to Shanmughave Nadar, the father of P. W. 1, at door No. 8 Muthuvvel Nadar Street for 1949-50. Ex. A-7 is the Savings Bank pass-book of P. W. 1 issued by the Co-operative Urban Bank Ltd., Virudhunagar and that again gives his address as Subbiah, Clerk, T. M. S. M. R. & Sons, 5/8, Muthuvvel Nadar Street, Virudhunagar (evidently 5 stands for the Ward number and 8 represents door number). It has not been suggested in the cross-examination of P. W. 1 or by evidence on the side of the 1st respondent that P. W. 1 was not residing in door No. 8, Muthuvvel Nadar Street, at the time of the enumeration nor is it disputed that the entries Nos. 114 and 119 would only relate to the parents of P. W. 1. It is therefore clear from these circumstances that P. W. 1 was the real voter No. 118.

34. It is also clear that R. W. 7 was not voter No. 118. The evidence of P. W. 1 is that R. W. 7 was residing in door No. 10, Muthuvvel Nadar Street, at the time of enumeration and that he was aged about thirty at the time of trial and therefore twenty-seven at the time of enumeration. Hence it is contended that entry No. 118 in Ex. A-1 could not possibly relate to R. W. 7. It is also pointed out that Pechiammal, the mother of R. W. 7, was entered as voter No. 123 in Ex. A-1 as residing in door No. 10 and that that again shows that R. W. 7 was residing only in door No. 10. In fact, R. W. 7 himself admits that he was only residing in door No. 10 at the time of enumeration, but he contends that at the time of the visit of the enumerator he was writing the accounts of one Gangadhara Nadar in door No. 8 and that that was why his address was noted in Ex. A-1 as door No. 8. R. W. 7's case is that this Gangadhara Nadar was the owner of a group of tenements comprised in door No. 8 and the adjoining house door No. 7 and had set apart one of the rooms in door No. 8 to R. W. 7 for the exclusive purpose of writing his accounts. Now, we are not prepared to accept this explanation of R. W. 7 for more reasons than one. Firstly, it was not the explanation suggested to P. W. 1 in cross-examination by the counsel for the 1st respondent. The suggestion then was merely that at the time of the enumerator's visit "R. W. 7 had come to the house in door No. 8". The 1st respondent would have it that he knew before filing the counter that R. W. 7's name was entered as No. 118 in the list because he was working in door No. 8 at the time of the preparation of the list. If so, why was it that the fact was not mentioned in the counter and was not suggested to P. W. 1 in cross-examination?

35. Secondly, it is highly doubtful whether R. W. 7 was an accountant of Gangadhara Nadar at all, for in Ex. A-8, the application form by his father for the ration card, his occupation is mentioned as 'cooly' and not as 'accountant'. His evidence is discrepant as to which accounts of Gangadhara Nadar he was writing and in particular whether he was writing the accounts relating to the rents received by Gangadhara Nadar from his houses. Again, R. W. 7 first claimed to be the accountant of Gangadhara Nadar all the year round, but later it whittled down to a claim of piece-time accountant employed at the end of the year alone. But even granting that he was the accountant of Gangadhara Nadar, it is improbable that Gangadhara Nadar set apart a whole tenement fetching a monthly rent of Rs. 4/- or Rs. 5/- for the exclusive purpose of getting accounts written by R. W. 7. Even assuming that R. W. 7 was writing the accounts of Gangadhara Nadar in door No. 8, it is extremely unlikely that R. W. 7 would have mentioned that as his residence to the enumerator or that the enumerator would have noted that as R. W. 7's residence. R. W. 7 admits that there was no provision for cooking in that room where he was writing the accounts.

36. Again, there can be no doubt that his age at the time of the enumeration must have been at least 27 as shown by the entry in Ex. A-8, the application for a ration card by his own father and to us also he appeared to be aged thirty at the time of the trial. The facts that he was living then in door No. 10 and that his age then was 27 and not 22 show clearly that entry No. 118 in Ex. A-1 could not relate to him. That is also clear from the collocation of the entries relating to voters Nos. 114, 119 and 123. It is obvious that the entries against Nos. 114 and 119 relate to the parents of the voter No. 118 and it is not the case of R. W. 7 that the entries against Nos. 114 and 119 relate to his parents.

37. It is clear, therefore, that the voter entitled to vote as No. 118 was P. W. 1 and not R. W. 7 and that R. W. 7 impersonated P. W. 1 when he applied for the postal ballot. This would be a major corrupt practice under Section 123 (3) of the Act. Sri Lakshminarayana Ayyar, the learned counsel for the 1st respondent, contends that the mere fact that R. W. 7 was not entitled to vote would not bring his act within the mischief of Section 123 (3) without further proof of *mens rea* on his part and that if he *bona fide* believed that he was the voter entitled to vote, that would excuse him. Sri Harihara Ayyar, however, goes to the extent of contending that the question of *mens rea* on is totally irrelevant under Section 123 (3). But the serious nature of the offence clearly shows that *mens rea* must be a necessary element. In fact, the authorities are also to the same effect. Thus, in *Pantam Venkayya*. In re (I.L.R. 53 Madras 444) our High Court held that *mens rea* was an essential element of an offence of impersonation under Section 171-D of the Indian Penal Code the words of which are substantially the same as in Section 123(3). There Lordships quoted the following observations of DENMAN, J., in the Stepney Case reported in 4 O'Malley and Hardcastle, page 34: "It is thoroughly understood election law that, unless there be corruption,

and a bad mind and intention in personating, it is not an offence". No doubt, the observation was made in a criminal case, but we think the same principle applies especially as the words used are practically the same.

38. The question, therefore, is whether R. W. 7 could have *bona fide* believed that he was the real voter. We are afraid not. R. W. 7 must have been conscious of the evidence which we have detailed above as establishing that P. W. 1 was the real voter and not he and if so, he could not have *bona fide* believed that he was the real voter. He must have known that he was living in door No. 10 and his age was 27 and that the description in Ex. A-1 of voter No. 118 could not possibly apply to him. Door No. 8 being only two doors off, he must have known also that the description could only apply to P. W. 1. The collocation of the entries relating to voters 114, 118, 119 and 123 also must have made him realised that he was not the real voter. Above all, the fact that he has resorted to a false explanation in Court, namely that he was at the time of enumeration working in door No. 8 shows retrospectively that he could not have had any honest belief at the time of applying for the ballot paper that he was the real voter. In fact, it is a tell-tale circumstance that in the notice Ex. A-11, dated 27-12-1951, to the Returning Officer he gave his address as No. 8 Muthuvil Nadar Street, Virudhunagar though in fact he had long before left that street and was residing in No. 36, T. C. Godown Street in December 1951. Ex. A-11 merely required him to specify his then actual address and not the address at the time of enumeration found in the voters' list (compare Ex. A-12). But the most telling circumstance against his *bona fides* is that though he was expected to be the relief polling agent only in the adjoining booth and could therefore have easily voted in person, he chose to apply for postal ballot. We are inclined to agree with the contention of Sri Harihara Ayyar, the learned counsel for the petitioner, that there was a deliberate motive behind R. W. 7 applying for postal ballot, namely that he did not want to run the risk of a challenge which would be made if he tried to vote in person. Sri Lakshminarayana Ayyar contends, on the other hand, that the very fact that R. W. 7 voted by postal ballot would show his *bona fides* because the offence would surely come to light in such a case whereas if R. W. 7 had gone to vote in person, there was the chance of his not being challenged at all, in which case even if a charge of impersonation were to be made later, R. W. 7 could have hoped to escape more easily. But, in the circumstances of this case, we prefer the explanation of Sri Harihara Ayyar. The evidence of P. W. 1 himself lends some support to this view for he says that a few days before the polling R. W. 7 came to canvass his vote but that he replied that he would be absent. Even if we reject the evidence of P. W. 1, the cumulative effect of the circumstances of the case is such that in our opinion it is impossible to say that R. W. 7 could have honestly or *bona fide* believed that he was the person entitled to vote as voter No. 118. We therefore find that R. W. 7 was guilty of the offence defined in Section 123 (3) and we would name him accordingly under Section 99 (a) (ii). We may add that after we come to a *prima facie* opinion on this point and before finally making up our minds, we gave an opportunity to R. W. 7 as contemplated in the proviso to Section 99.

39. While we hold that R. W. 7 was guilty of the offence, we must add that there is no proof that the 1st respondent or his election agent connived at this impersonation or even had knowledge of it then.

40. The next question is what is the consequence of this impersonation of R. W. 7 under the above circumstances. Section 100(2) (b) enacts that if the Tribunal is of opinion that any such corrupt practice specified in Section 123 has been omitted by a returned candidate or his agent or by any other person with the connivance of a returned candidate or his agent, the Tribunal shall declare the election of the returned candidate to be void. Now, Section 79 (a) of the Act defines an 'agent' for the purpose of Parts VI, VII and VIII (Section 100 is in Part VI) as including a polling agent. In other words, R. W. 7 would be an 'agent' for the purpose of Section 100 (2) (b) and the Tribunal would have to hold the election of the returned candidate to be void even without proof of the connivance by the 1st respondent or his election agent. Section 100 (3), however, is in the nature of a proviso to Section 100 (2) and enacts: -

"100(3) If in the opinion of the Tribunal, a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice specified in Section 123, but the Tribunal is satisfied—

- (a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the sanction or connivance, of the candidate or his election agent;
- (b) that all such corrupt practices were of a trivial and limited character or took the form of customary hospitality which did not affect the result of the election;
- (c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt or illegal practices at the election; and
- (d) that in all other respects the election was free from any corrupt or illegal practice on the part of the candidate or any of his agents,

then the Tribunal may decide that the election of the returned candidate is not void.

41. Section 100 (3) is in the nature of a proviso and the four clauses of sub-section (3) are committed by the expression 'and'. It is, therefore, clear that to avail himself of the sub-section (3), the 1st respondent must satisfy the Tribunal that all the four clauses (a), (b), (c) and (d) have been satisfied. Unfortunately however, for the 1st respondent, he has not been able to satisfy us in this regard. Taking clause 'a', we are prepared to hold in his favour that the corrupt practice was committed without the sanction or connivance of the 19. respondent or his election agent, but he has not shown that the practice was committed contrary to his orders. Now, in the first place, it has not been pleaded in the counter that he issued orders prohibiting such a corrupt practice. Even in chief-examination he does not say that he issued any such orders. In cross-examination he stated that he did not give instructions individually to his polling agents, regular and reserve, but he got a set of instructions printed and distributed among them, but no copy of it was available. It is not his case that he gave any specific instructions to R. W. 7 prohibiting such corrupt practices. On the contrary, his evidence is that he had not seen R. W. 7 at all before R. W. 7 mounted the witness box. Sri Lakshminarayana Ayyar, the learned counsel for the 1st respondent, suggests that the 1st respondent may be presumed to have given such orders and that to construe the section otherwise would be an invitation for letting in artificial evidence of such orders having been given. We are unable to agree. The argument would treat the words "contrary to the orders" as surplusage, a construction which we must try to avoid. We hold therefore that clause (a) has not been satisfied.

42. As for clause (b), it is true that since only one instance of impersonation has been proved and no other corrupt practice has been proved, the corrupt practice is of a limited character, but then the clause says that it must also be of a trivial character. How can we say that impersonation of a trivial character? It may be trivial in its result since it brought only one additional vote but it is certainly not trivial in its character. We therefore hold that clause (b) also has not been satisfied.

43. Regarding clause (c), for reasons given re: clause (a) we hold that the 1st respondent has not satisfied us that he took all reasonable means for preventing the commission of such a corrupt practice.

44. Clause (d) of course, has been satisfied, because no other corrupt or illegal practice has been proved, but since clauses (a), (b) and (c) have not been satisfied, the 1st respondent cannot avail himself of the benefit of sub-section (3) of Section 100. It follows, therefore, that under Section 100 (2) the Tribunal has no option but to declare the election of the 1st respondent to be void on this ground of impersonation also. Our finding on issue No. 5 is therefore that R. W. 7 was guilty of false impersonation and that under Section 100 (2) the election of the 1st respondent has to be declared void.

45. We now pass on to the charge of irregularities at the polling stations, Mallankinar and Kambikudi. Sri C.R. Narayanasami Mudaliar (R.W. 5), then the Commissioner of the Aruppukottai Municipality, was the Presiding Officer at the former place. There were two polling stations at Mallankinar as will appear from Ex. A-43 and one of them was in the Senthikumar Nadar Middle School. Booths Nos. 3, 4 and 5 were located in the premises of that school. It is alleged that about 250 voters had come to the polling station before 5 P.M. but could not vote before that hour, that R. W. 5 issued identification slips to them to enable them to vote, as under the rules he was bound to do, that after a few of them had voted, he changed his mind and refused to allow the others to vote and that he snatched the slips issued to them and tore them off. This he is said to have done notwithstanding the protests of the voters and the written objections of P. W. 6, the polling agent of the petitioner. The suggestion is that he was interested in the success of the 1st respondent. These allegations are, of course, denied by the 1st respondent. P. W. 6, Ramasami Naicker, the polling agent of the petitioner and P.W. 7, a voter, give evidence in support of the petitioner. On the other side, R. W. 13, the polling agent of the 1st respondent, would state that the voting went on till 8-30 P.M., that all the voters that had come to the station at 5 P.M. were allowed to vote and that the slips wrongly issued to those who came after the specified hour were alone taken from them and torn. R. W. 14, Vettai Moopan, a voter, says he went to the polling station at 4-30 P.M., was given an identification slip at 5 P.M. and voted at 6-30 P.M. He states further that R. W. 5, the Presiding Officer, took the slips only from those who came after 5 P.M., and joined the queue and to whom slips had been wrongly issued by another officer and tore them. According to him, he remained at the station till about 7-15 P.M. and voting was then going on.

46. R. W. 5, Sri Narayanaswami Mudaliar, the Presiding Officer, swears that all the voters who had come before 5 P.M.,—about 180 in number—were allowed to vote, that voting went on till 8-30 P.M., that a few voters came after 5 P.M., and joined the queue, that his Assistant wrongly issued identification slips to them also and that he got them back and tore them. He would deny that Ex. A-41 is one of such slips issued by him and that the initials contained in it are his. He was asked to put his initials before Court and that is Ex. A-42. The three letters 'C', 'R' and 'N' are distinct and separate in Ex. A-42. Some of the files from the Aruppukottai Municipality were sent for and some of the initials contained in them have been marked as Exs. A-51(a), A-51(b), A-32 (a), A-52(b), A-53(a) and A-53(b). We have no doubt that Ex. A-41 contains the initials of R. W. 5 and that Ex. A-42, the initials put by him in Court, are quite unlike his usual initials, though he would say that Exs. B-43 and B-44 are somewhat similar. But the production of an identification slip issued by the witness leads us nowhere. That will not show that the voters were

illegally prevented from voting. The witness has also given confused answers as to the time and mode of arrival of the late comers, the steps he took to prevent them from joining the queue and details of what all took place after 5 P.M. The diary and the statement under Rule 17 (2) (which is the same as the statement referred to in Column 13 (ii) of Ex. B-14) are mentioned in Ex. B-14 as having been sent, but unfortunately they are not now available. There are discrepancies in the testimony of the witnesses on either side, but it is unnecessary to catalogue them as we propose to rest our conclusions on broad probabilities. R. W. 5 evidently did his duty and issued slips to all the voters that had come to the polling station before 5 P.M. but could not vote by that hour. Why should he suddenly change his mind and prevent them from voting? The reason suggested in the evidence of P. W. 6 is that Messrs. Ramasami Chettiar and Palanisami Nadar, Chairman and Councillor of the Aruppukottai Municipality, came to the polling station at about 5-30 P.M. and talked with R. W. 5 and that at the instance of these two persons who were very much interested in the 1st respondent R. W. 5 closed the polling immediately. One would think that if this were true, it would be mentioned in the forefront in the petition. But there is no reference to the visit of either of these gentlemen in the petition. P. W. 6, the polling agent, asserts that all the 250 voters that were deprived of their franchise, were supporters of the petitioner and had come there to cast their votes for him. If by the high-handed action of R. W. 5, the petitioner was deprived of a large number of votes, it is not likely that P. W. 6 or Chennappa Naidu who came to the spot immediately or the petitioner who was informed of it even on 6th January, 1952 would have kept quiet without bringing it to the notice of the higher authorities though that might not have brought them any immediate relief. P. W. 6 in his evidence would say that the polling began late, a case not put forward in the petition. He would again say that the ballot boxes were all despatched at 8-30 or 9 P.M., evidently to make it appear that the polling must have closed much earlier, but that is found to be inaccurate as Ex. B-14 shows that the boxes and the records were handed over only at 3-30 A.M. on 6th January, 1952. P. W. 7, Tiruvettai, deposes that the chit was given to him even as soon as he went to the station which was at 4 P.M. and the officer got back the chit on the false representation that he could issue a voting paper and that he did not subsequently do so. This certainly is not the case of any one and the issue of the identification slip even at 4 P.M. is quite improbable. Though the witness would mention with meticulous accuracy the hours when the various incidents happened, he had to admit that he could not give the hour of the day, by looking at a clock. We are unable to accept the evidence of P. W. 6 and P. W. 7. Notwithstanding the denial of his initials in Ex. A-41 and the somewhat confused and conflicting answers given by R. W. 5, there is no apparent reason why he, a responsible officer, should not be believed. We accordingly hold that the irregularities alleged to have taken place at Mallankinar have not been proved.

47. At Kambikudi it is alleged that the Presiding Officer one Sri Seshadri Ayyangar arrived late at the polling station, started the polling at 9-45 A.M. and closed it at 5 P.M. though as many as 450 voters had come there before that hour and had to vote. P. W. 3, the Reserve Polling Officer, P. W. 4, a voter, and P. W. 5, the polling agent of the petitioner, speak to the petitioner's case. R. W. 15, the village munsif of Kambikudi, says that the Presiding Officer stayed at the polling station itself the previous night and was there at 6-30 A.M. and that the polling began at 7 A.M. and continued till 6-30 P.M. and that no one who came before 5 P.M. was asked to go away without being allowed to vote. R. W. 16 Corkavalan, a voter, deposes that he voted at 7-30 A.M. The Presiding Officer could not be traced and the Tribunal has not had the benefit of his evidence. The oral evidence on the side of the 1st respondent appears to be preferable to that on the side of the petitioner. P. W. 3 is the brother of the Congress Secretary, Aruppukottai and his sympathies must certainly be with the petitioner, the Congress candidate. P. W. 4 says that there were 400 voters when he went at 6 A.M. and joined the queue and that several of them left because of the delay in the commencement of the voting. He says he waited till noon and then alone went for his meals. If his evidence were true, he should have voted in the morning itself as according to P. W. 3 about 400 to 450 voters were polled before midday. His evidence therefore appears improbable. P. W. 5 is none other than the polling agent of the petitioner. While he says he lodged his objections with the Presiding Officer, neither he nor the petitioner followed it up by bringing the irregularities to the notice of the higher authorities, though they could not have immediately done so as the nearest telegraph office is 15 miles away. According to P. W. 3, the talayari was sent to fetch the Presiding Officer and the polling agents asked him when he came why he was late, but the evidence of P. W. 5 is quite different. R. W. 15 is the village munsif. He must be fully conversant with what took place and though he happens to be the brother of the polling agent of the 1st respondent, his evidence is in the circumstances entitled to credence. According to P. W. 3, the Presiding Officer was there even the previous day and assuming that he stayed for the night in a house two furlongs off, it is quite improbable that he was unduly late and came to the polling station only at 8-30 A.M. It is again difficult to believe that though he was inclined to continue the polling after 5 P.M. he stopped it at the suggestion of the police constables present as P. W. 3 would say. Sri Harihara Ayyar, the learned counsel for the petitioner, wishes to contend from the low polling at this station which is just above 50 per cent that a large number of voters must have been prevented from voting. That might be due to various causes and it would not be legitimate to infer from that circumstance that the petitioner's case is true. We accordingly find that the irregularities alleged with regard to the polling at Kambikudi have not been made out either. Issue 6 is found in the negative.

48. *Issue No. 7.*—The next incident we propose to deal with is the alleged tampering of the ballot box by one Amanulla. The facts relating to this are not very much in dispute. In polling station No. 165, Virudhunagar the Presiding Officer suspected that voter Amanulla was tampering with the ballot box of the 1st respondent, caught hold of him and handed him over to the police. He removed the box which bore the number '45-2' and substituted another 45-2A. The polling continued and as on examination by the Returning Officer it was found that the box with the paper seals were intact, the votes in both the boxes were counted and included in the votes cast on behalf of the 1st respondent. This the petitioner contends is illegal. According to him, the new box should not have been substituted nor the votes in the two boxes counted and there should have been a fresh poll under the provisions of Section 58 of the Act. R. W. 2 Sri S. V. Krishna Ayyangar, the Presiding Officer, says that he got the report Ex. B-8 from the Assistant Presiding Officer, went inside the booth and found that the seals had been separated. Amanulla was apprehended and his explanation was that his ballot paper did not go into the slit and that therefore he placed his hand on the box and blew air into the slit and the seals got separated. He sent the report Ex. A-17(a) to the Returning Officer and Ex. B-9 in his diary which contains a record of what took place. He closed the box No. 45-2 and placed a new box 45-2A and the voting went on. R. W. 11, Sri M. S. Ram, the Returning Officer, states that the paper seals in both the boxes were intact and that the counting began after the candidates and their agents satisfied themselves about it. We are unable to appreciate the grievance of the petitioner in this matter. There is nothing illegal or irregular about the procedure adopted by the Presiding Officer and one should think that the course followed by him was the most sensible and proper one. He could not without opening the box—which he could not do—find out whether really the box had been tampered with and he therefore substituted a fresh box leaving it to be decided later, whether, in fact, there was tampering. Subsequent examination by the Returning Officer showed that really there was none and the votes in both the boxes were taken into account. The case does not fall within Section 58 and there was no need for a fresh poll. And we have not been referred to any provision of any enactment, rule or authority that in circumstances like the present the election should be set aside. On principle too, we should think that there is no justification for the contention that the election is void on that score. Issue 7 is found in the negative.

49. Issue 8 connected with issues 6 and 7 is also found in the negative.

50. *Issue No. 9.*—We have held under issues 1 and 2 that the 1st respondent is disqualified under Section 7(d) of the Act on the date of the nomination, namely 20th November, 1951. Obviously, the result of the election has been materially affected by the improper acceptance of this nomination within the meaning of Section 100(1)(c) of the Act: it could not possibly be otherwise from the very nature of the thing. The election has therefore to be set aside on this ground as well as on the ground of impersonation by R. W. 7, the polling agent of the 1st respondent under Section 100(2)(b) as we have found under issue 5.

51. In the result, we declare the election of the 1st respondent, the returned candidate to be void under Section 98(b). Further, under Section 99 we find that the corrupt practice of impersonation defined in Section 123(3) was committed by R. W. 7 S. Subbiah, the polling agent of the 1st respondent, and we accordingly name him under Section 99(1)(a)(ii). Under Section 99(1)(b) and Section 120 we direct the 1st respondent to pay the petitioner the costs of this petition and bear his own costs. We fix Rs. 600 (Rupees six hundred only) as the costs of this petition payable by the 1st respondent to the petitioner (Rs. 500 the vakkil's fee and Rs. 100 which we find to be the remaining expenditure incurred by the petitioner).

52. Before closing, we would like to express our agreement with the opinion of the other Tribunals that it is desirable to have the validity of the acceptance or rejection of the nomination finally decided before the polling begins instead of following the present system.

Pronounced by us in open Court, this, the 4th day of April, 1953.

(Sd.) K. S. VENKATRAMAN, *Chairman.*

(Sd.) R. RAJAGOPALA AYYAR, *Member (Judicial).*

(Sd.) P. R. NARASIMHA AYYAR, *Member (Advocate).*

PARTICULARS OF COSTS

(*Costs incurred by the petitioner*)

		Rs.	A.	P.
1. Stamp on vakkalat	· · · · ·	·	1	0
2. Stamp on petitions and document lists	· · · · ·	·	6	12
3. Process fees	· · · · ·	·	58	10
4. Subsistence allowance to witnesses	· · · · ·	·	33	10
5. Vakkil's fee (as fixed)	· · · · ·	·	500	0
		TOTAL	600	0

(Rupees six hundred only).

(Costs incurred by the 1st respondent)

	RS. A. P.
1. Stamp on vakalat	1 0 0
2. Stamp on petitions and document lists	2 4 0
3. Stamp duty and penalty	2 0 0
4. Process fees	2 7 0
5. Subsistence allowance to witnesses	21 2 0
6. Vakil's fee (as fixed)	500 0 0
TOTAL	528 13 0

(Rupees Five hundred and twenty-eight and annas thirteen only).

(Sd.) K. S. VENKATRAMAN, *Chairman.*(Sd.) R. RAJAGOPALA AYYAR, *Member (Judicial).*(Sd.) P. R. NARASIMHA AYYAR, *Member (Advocate).*

PETITIONER'S EXHIBITS

A-1/ Marked copy of the Electoral roll relating to booth No. 49, Polling Station No. 167 (with special reference to the entry of voter No. 118 —*vide* page 2, column 2).

A-2/ Ration Enquiry form of Pakkiammal (mother of P.W. 1).

A-3/21-9-1950 Intimation of change of address by Pakkiammal aforesaid.

A-4/ Application by Pakkiammal for addition of a new member in the ration card.

A-5/ Ration Register relating to Ward No. V of Virudhunagar Municipality.

A-5(a)/ Entry in the Ration Register (Form IV) relating to Door No. 8, Ward No. 5, Muthuvelu Nadar Street, Virudhunagar (page 28) relating to Pakkiammal.

A-5(b)/ Entry at page 2 of ditto ditto ditto.

A-6/ Kerosene Ration Card of Shanmughavel Nadar (No. 3238/1080 for 1949-1950).

A-7/6-4-1950 to 8-7-1950 Savings Bank Pass Book of S. Subbiah in the Co-operative Urban Bank Ltd., Virudhunagar.

A-8/ Ration enquiry form relating to Shanmuga Nadar (father of R.W. 7).

A-9/25-10-1949 Intimation of change of address by ditto ditto.

A-10/13-12-1949 Application by Shanmuga Nadar for deleting the name of Vadi-velu (son) from the Ration Card.

A-11/27-12-1951 Notice by the 1st respondent to the Presiding Officer, Polling Station No. 167, Virudhunagar, appointing S. Subbiah (R.W. 7) as his Polling agent.

A-12/ Application of S. Subbiah (R.W. 7) to the Returning Officer for the issue of postal ballot paper.

A-13/3-1-1953 Entry in the witness list of the 1st respondent relating to Subbiah (*vide* Serial No. 10).

A-14/ Entry at page 28 *re*. Shanmuga Nadar in the Ration Register relating to Ward No. XVII, Godown Street, T. C.

A-15/5-1-1952 Ballot paper account, Form No. 10, for booth No. 49, Polling Station No. 167.

A-16/4-1-1952 Postal ballot paper of S. Subbiah (R.W. 7).

A-17/6-1-1952 Appendix A of the Written Statement in Election Petition No. 58 of 1952 of Sri M. S. Ram, Returning Officer (R.W. 11) (Copy of letter, dated 6th June 1952 of Sri S. V. Krishna Ayyangar, Presiding Officer, Polling Station No. 165, to the Returning Officer).

A-17 (a)/5-1-1952 Original Report of Sri S. V. Krishna Ayyangar, Presiding Officer, Polling Station No. 165, to the Returning Officer.

A-18/5-1-1952 . . . Form No. 10 account for polling station No. 155, Periaperali.

A-19/8-1-1952 . . . Form No. 14 account for all the four candidates.

A-20/ . . . Consolidated Form No. 10 account for polling station No. 156.

A-21/ } A-21 (a) } 5-1-1952 . . . Form No. 10 account for booth No. 1 of polling station 156, Alagianallur.

A-21 (b) }

A-22 } A-22 (a) } 5-1-1952 . . . Ditto ditto for booth No. 2 ditto.

A-22 (b) }

A-23 } A-23 (a) } 5-1-1952 . . . Ditto ditto for booth No. 3 ditto.

A-23 (b) }

A-24 } A-24 (a) } 5-1-1952 . . . Ditto ditto for booth No. 4 ditto.

A-24 (b) }

A-25/ . . . Certified copy of No. 10 account for polling station No. 156 (Booth No. 3).

A-26/5-II-1951 . . . Proceedings of the District Supply Officer, Ramanathapuram re: pledging of food-grains of Messrs. V. V. Ramaswami and Sons, with the Indian Bank Ltd., Virudhunagar.

A-27/21-II-1951 to 12-4-1952. . . Copy (ledger folio) of the Godown Register of the Indian Bank Ltd., Virudhunagar, relating to Messrs. V. V. Ramaswami & Sons, (pages 180 and 182).

A-28/1-II-1951 to 29-2-1952. . . Copy of the Key Loan Account of Messrs. V. V. Ramaswami & Sons, with the Indian Bank Ltd., Virudhunagar.

A-29/1-II-1951 to 30-6-1952. . . Copy of the Open Loan account of ditto ditto

A-30/21-II-1951 to 7-4-1952. . . True extract from the Limit Book of the Indian Bank Ltd., Virudhunagar, relating to Messrs. V. V. Ramaswami & Sons.

A-31/24-6-1949 . . . True copy of the application of the Partners of the Firm of Messrs. V. V. Ramaswami & Sons for opening a Current Deposit account with the Indian Bank Ltd., Virudhunagar.

A-32/17-10-1951 . . . Copy of the partnership letter from the Firm to the Indian Bank.

A-33/16-II-1951 . . . True extract of the Advance Register of the Indian Bank Ltd., Virudhunagar, showing the amount up to which advances can be made.

A-34/16-II-1951 . . . Deed of pledge of goods executed by the 1st respondent for himself and as guardian of his minor son, and by his two adult sons in favour of the Indian Bank Ltd.

A-35/3-7-1952 . . . Cash bill of M. S. P. Nadar & Sons relating to purchase of cement in the name of Periasami (shown as purchaser).

A-36/4-7-1952 . . . Ditto ditto in the name of S. Souriraj.

A-37/3-7-1952 . . . Ditto ditto in the name of Mariappa Nadar.

A-38/ . . . Certified copy of No. 10 account for booth No. 2 of Polling Station No. 156, Alagianallur.

A-39/ . . . Ditto ditto [booth No. not given—copy of Ex.-A-24 (a)].

A-40/ . . . Certified copy of form No. 10 account (for booth No. 3) polling station No. 156.

A-41/ . . . One of the slips alleged to bear the initials of R.W. 5 (Sri C. R. Narayanasami Mudaliar).

A-42/20-I-1953 . . . Specimen signature of R.W. 5.

A-43/ . . . Published list of polling booths for the Virudhunagar Assembly Constituency.

A-44/13-I-1952 . . . Office-copy of Form No. 16 account showing total number of valid, invalid and tendered votes for Virudhunagar Assembly Constituency.

A-45/13-I-1952 . . . Final office-copy of Form No. 16 account for Virudhunagar Assembly Constituency.

A-46/ . . . Cover containing tendered votes list.

A-46 (a)/ Tendered votes list for booth No. 68, polling station Kalkurichi marked 'Nil'.

A-46 (b)/ Tendered votes list marked 'nil'.

A-47/ Cover containing the tendered votes list for booth No. 3, (female booth) polling station No. 139.

A-47 (a)/ Tendered votes list marked 'nil' ditto.

A-48/ Cover containing tendered votes list for polling station No. 180.

A-48 (a)/ Tendered votes list relating to Numarandi Thevar, voter, relating to the above polling station (voter No. 198).

A-49/ Cover containing tendered votes list for polling booth No. 49, polling station No. 167.

A-49 (a)/ Tendered votes list relating to S. Subbiah, voter No. 118, relating to the above polling station.

A-50/27-12-1951 Notice by 1st respondent to the Presiding Officer, Kambikkud polling station (polling station No. 151) appointing Karuppiah Thevar as relief agent.

A-51/ File L. Dis. No. 7025/51 of the Municipal Office, Aruppukottai.

A-51 (a)/25-8-1951 Initial of R.W. 5 at page 6 of ditto.

A-51 (b)/31-8-1951 Initial of R.W. 5 at page 7 of ditto.

A-52/ File L. Dis. No. 7096/51 of the Municipal Office, Aruppuottai.

A-52 (a)/4-8-1951 Initial of R.W. 5 at page 3 of ditto.

A-52 (b)/4-8-1951 Initial of R.W. 5 at page 1 of ditto.

A-53/ File L. Dis. No. 7132/51 of the Municipal Office, Aruppuottai.

A-53/(a)5-9-1951 Initial of R.W. 5 at page 7 of ditto.

A-53 (b)/4-8-1951 Initial of R.W. 5 at page 1 of ditto.

A-54/14-5-1952 Registration copy of the sale deed executed by 1st respondent for himself and as guardian of his minor son Rajasekharan in favour of Anandam.

A-55/5-9-1948 Agreement entered into by Messrs. V. V. Ramaswami & Sons with the Government of Madras.

A-56/15-2-1949 Ditto on behalf of Messrs. V. V. Ramaswami & Sons re: purchase storage and distribution of notified foodgrains under the Intensive Procurement Order.

A-57/ Photograph of the Van MIR. 1798 with R.W. 7 standing in the crowd following the van.

A-58/16-4-1948 Certified copy of the order in O.P. 17 of 1947 on the file of Sub-Court Raminad (See paragraph 9).

A-59/16-2-1952 Office-copy of the proceedings of the Collector of Ramanathapuram R.O. C.P-6-24075/51.

A-60/19-2-1952 Letter of the partners of the firm to the Collector of Ramanathapuram holding themselves responsible for any acts or omission of the former firm.

A-61/25-2-1952 Office-copy of R.O.C.B.-6-24075/51 letter from the Collector of Ramanathapuram to the Secretary to Government, F. & A. Department, Madras.

A-62/29-3-1952 Ditto ditto ditto

A-63/1-4-1952 Letter from the Collector to the firm calling for a statement showing procurement grainwar up to 31-12-1950.

A-64/14-4-1952 Proceedings of the Collector to the Firm whether accounts have been produced before the Ration Officer for check.

A-65/22-4-1952 Letter from the Firm to the Collector of Ramanathapuram that accounts have been produced before the Ration Officer, Virudhunagar.

A-66/8-5-1952 Letter (signed by R. T. Rajan) from Messrs. V. V. Ramaswami & Sons to the Rationing Officer, Virudhunagar intimating that there is no arrear to be paid by the firm and requesting return of the statements.

A-67/16-5-1952 Report No. L. Dis. 350/52 of Rationing Officer, Virudhunagar to the Collector re: checking of accounts of V. V. R. & Sons.

A-68/18-5-1952 . . . Collector's reminder letter R.O.C.P.-6-24075/51 to the Rationing Officer, Virudhunagar.

A-69/23-5-1952 . . . Ditto ditto re. checking of accounts for 1944 to 1948.

A-70/28-8-1952 . . . Memo. of the Rationing Officer, Virudhunagar to the Firm calling for a statement re. procured and imported quotas for the period 1944 to 1948.

A-71/30-7-1952 . . . Collector's letter R.O.C.P-6-24075/51 to Messrs V. V. Ramaswami & Sons, directing production of accounts before the T.S.O., Sattur.

A-72/26-8-1952 . . . Collector's letter No. ditto to ditto asking to state whether accounts have been produced as directed.

A-73/28-2-1951 . . . Proceedings of the Collector of Ramanathapuram showing allotment of rice to various quota holders (R.O.C.P-1-2704/51).

A-74/22-3-1951 . . . Proceedings of the Collector of Ramanathapuram (R.O.C.P-3/5338/51) showing the allotment of wheat to the various whole-salers in the district.

A-75/3-4-1951 . . . Proceedings of the Collector of Ramanathapuram R.O.C.P-1/5796/51 showing the allotment of rice to the various quota holders.

A-76/4-5-1951 . . . Proceedings of the Collector of Ramanathapuram R.O.C.P.-1/8314/51 showing the allotment of rice to various quota holders.

A-77/9-5-1951 . . . Ditto R.O.C.P.-3/P.R. 77/51 showing the allotment of wheat to the various whole-salers in the district.

A-78/12-6-1951 . . . Ditto R.O.C.P.-1/11427/51 showing the allotment of milo to the various whole-salers in the district.

A-79/25-6-1951 . . . Ditto R.O.C. 12464/51 showing allotment of wheat to the various whole-salers in the district.

A-80/11-7-1951 . . . Ditto showing the allotment of wheat to the various whole-salers.

A-81/16-7-1951 . . . Ditto showing the allotment of milo.

A-82/24-7-1951 . . . Ditto showing the allotment of milo.

A-83/8-8-1951 . . . Ditto R.O.C.P-2/P.R. 195/51 showing the allotment of milo.

A-84/27-8-1951 . . . Ditto R.O.C.P-3-14388/51 showing the allotment of wheat products.

A-85/12-9-1951 . . . Ditto R.O.C.P-2-P.R. 808/51 showing milo allotment.

A-86/3-10-1951 . . . Ditto R.O.C.P-1-18151/51 showing allotment of rice to various quota holders.

RESPONDENT'S EXHIBITS

B-1/14-2-1952 . . . Report of the Sub Inspector of Police, Virudhunagar, in F.I.R. No. 1 of 1952.

B-2/ . . . Marked copy of the Electoral roll relating to polling station No. 156 (Booth No. 3).

B-3/16-1-1953 . . . Calculation memo. prepared by the clerk of the Tribunal, showing the total number of votes polled at ditto.

B-4/ . . . Marked copy of the Electoral roll relating to Polling station No. 156 (booth No. 1).

B-5/16-1-1953 . . . Calculation memo. prepared by the clerk of the Tribunal, showing the total number of votes polled at ditto.

B-6/21-6-52 to 17-11-52 . . . Building account relating to the plastering of the Virudhunagar Church maintained by R.W. 1 (Sowriraj).

B-7/ . . . Photograph relating to the inscription of the donor's name in the church building.

B-8/5-1-1952 . . . Report of the Assistant Presiding Officer, Booth No. 45, polling station No. 165, to the Sub Inspector of Police, Virudhunagar.

B-9/5-1-1952 . . . Diary maintained by the Presiding Officer, polling station No. 165, on the date of poll.

B-10/ . . . Unused ballot papers Nos. 979744 to 980000 relating to booth No. 1 (257).

B-11/ . . . Ditto ditto Nos. 980499 to 980700 relating to booth No. 2 (202).

B-12/ Unused ballot papers Nos. 981350 to 981500 relating to booth No. 3 (151).

B-13/1-1-1951 to 18-1-1953 . Ditto ditto Nos. 982116 to 982300 relating to booth No. 4 (185).

B-14/6-1-1952 . List showing the documents and articles handed over by R.W. 5 to the Returning Officer through the collecting officer.

B-15/ Account book relating to the Parish at Virudhunagar, maintained by R.W. 1.

B-16/ Note-book showing foreign contributions to the church, maintained by R.W. 1.

B-17/25-6-52 to 15-8-52 . Day book of R.W. 12 (H. S. Periasami Nadar).

B-17(a)/30-6-1952 . Entry at page 4 of ditto showing the payment of Rs. 2,000 as donation to the church.

B-17(b)/11-7-1952 . Ditto at page 15 of ditto showing the payment of Rs. 1,000 as donation to the church.

B-17(c)/14-7-1952 . Ditto at page 17 of ditto showing the payment of Rs. 1,000 as donation to the church.

B-18/11-7-1952 . Letter from R.W. 1 to the clerk-in-charge of R.W. 12 and the receipt for Rs. 1,000 by A. Hrudayaraj, school teacher.

B-19/14-7-1952 . Ditto ditto Rs. 1,000.

B-20/17-8-51 to 25-6-52 . Day book for the period prior to Ex. B-17.

B-21/20-2-1950 . Registered agreement of partnership among 1st respondent and his three sons.

B-22/23-2-1950 . Letter by 1st respondent (V. V. Ramaswami & Sons) to the Income-tax Officer with the endorsement of return by the Income-tax Officer.

B-23/22-5-1951 . Order of the Income-tax Officer, recognising the partial partition in respect of the business assets of the 1st respondent firm (No. G. I. 120-R/50-51).

B-24/4-4-1951 . Acknowledgment of Registration of Firm issued by the Registrar of Firms, Madras, to V. V. Ramaswami & Sons.

B-25/12-2-1949 to 11-2-1950 Ledger No. 7-A maintained by V. V. Ramaswami & Sons (pages 3, 9 and 363).

B-26/12-2-50 to 13-2-51 . Ledger No. 8-A ditto (pages 7 to 10).

B-27/8-3-1951 . Agreement entered into between the State of Madras and the Firm of V. V. Ramasami & Sons (Referred to as Ex. A in the Election Petition).

B-28/5-3-1951 . Proceedings of the Collector of Ramanathapuram (R.O.C.P.-1 2704/51).

B-29/2-4-1951 to 3-10-1951 Reserve Stock Book of paddy maintained by V. V. Ramaswami & Sons (pages 40 to 44).

B-30/11-5-1951 . Publication in the Fort St. George Gazette Extraordinary (No. 18) Part II of the Madras Foodgrains (Intensive Procurement) Order.

B-31/15-11-1951 . Registered deed of release by 1st respondent re. partnership in the V. V. Ramasami & Sons Firm.

B-32/15-11-1951 . Notice of change in the constitution of the Firm presented to the Registrar of Firms, by R. T. Rajan.

B-32(a)/15-11-1951 . Communication by R. T. Rajan to the Registrar of Firms.

B-32(b)/16-11-1951 . Postal acknowledgment signed by the Registrar of Firms.

B-32(c)/15-11-1951 . Postal receipt for sending the notice.

B-33/19-11-1951 . Money Order acknowledgment by the Registrar of Firms, Madras for receipt of Rs. 1-8-0 sent by V. V. Ramasami & Sons.

B-33(a)/15-11-1951 . Office copy of M.O. form for ditto.

B-34/19-11-1951 . Receipt issued by the Registrar of Firms for Rs. 1-8-0.

B-34(a)/23-11-1951 . Memorandum acknowledging receipt of notice of change in the constitution of the Firm.

B-35/17-11-1951 . Letter by V. V. Ramasami & Sons (R. T. Rajan) to the Collector of Ramanathapuram intimating change in partnership.

B-36/29-10-1952 . . . Proceedings of the Collector of Ramanathapuram (R.O.C.P.-6-19434/52) accepting the relinquishment by V. V. Ramaswami.

B-37/2-2-1952 . . . Copy of 'Tamil Nad' paper, dated 2-2-52 containing publication by R. T. Rajan notifying about the relinquishment by 1st respondent from V. V. Ramasami & Sons.

B-38/15-11-1951 . . . Publication by R. T. Rajan in the Fort St. George Gazette notifying that V. V. Ramaswami ceased to be a partner of the firm (page 228 of the Gazette dated 19-2-1952).

B-39/14-2-1951 to 18-2-1951 Ledger Book No. 9-A maintained by V. V. Ramasami & Sons (pages 3, 4, 5 and 176).

B-40/13-2-1952 to 5-1-1953 Ledger Book No. 10-A maintained by V. V. Ramasami & Sons (pages 3, 21 and 90).

B-41/14-2-51 to 12-2-52 . . . Ledger Book No. 9-C showing profit and loss account (page 272), apportioning the share of 1st respondent in the loss sustained by the firm.

B-42/4-9-1952 . . . Certified copy of Income-tax Return for 1951-52 furnished by 1st respondent to the Income-tax Officer, Virudhunagar.

B-43/31-8-1951 . . . Initial of R.W. 5 at page 4 of the file L. Dis. 4429/51 of the Municipal Office, Aruppukottai.

B-44/24-8-1951 . . . Ditto ditto at page 5 of the file L. Dis. No. 7039/51 of ditto.

1-45/ . . . Day book of Messrs. V. V. Ramasami & Sons, Virudhunagar.

2-46/1-10-1952 . . . Original Proceedings D. Dis. 24035-51 of the Collector of Ramanathapuram, accepting the relinquishment by 1st respondent.

B-47/29-10-1952 . . . Application of 1st respondent to the Collector of Ramanathapuram, requesting clarification of the date of acceptance of the relinquishment tendered by him.

B-48/30-1-1952 . . . Order under Section 26-A of the Income-tax Officer, Virudhunagar (G. I. No. 237-v/51-52).

B-49/31-1-1952 . . . Assessment order for 1951-52 for R. Jayakar.

B-50/31-1-1952 . . . Ditto ditto for R. T. Rajan.

B-51/31-1-1952 . . . Ditto ditto for V. V. Ramasami.

B-52/31-1-1952 . . . Ditto ditto ditto.

B-53/8-2-1951 . . . Certified copy of the judgment in C. A. 120 of 1950 of the Court of Session, Ramanathapuram.

B-54/5-1-1953 . . . Document list filed on behalf of Government.

B-55/19-12-1952 . . . Battu memo for summons for production of records.

PETITIONER'S WITNESSES

1. Sri Subbiah (son of Shanmughavel Nadar).
2. , , Doraisami Nadar (2nd respondent).
3. , , Balakrishna Chettiar (Reserve Polling Officer, Kambikudi).
4. , , Vellaichami Mooppanar.
5. , , Sankaradoss (polling agent of petitioner at Kambikudi polling station).
6. , , Ramaswami Naicker (son of Tirupathi Naicker—polling agent of petitioner at Mallankinar).
7. , , Tiruvattai (son of Peria Velliah Kudumban).
8. , , Antonimuthu Nadar (son of Anna Maria Nadar).
9. , , G. S. Ardhanari (Agent of the Indian Bank Ltd., Virudhunagar).
10. , , T. Ramaswami Reddiar (son of Thimmi Reddiar).
11. , , Ramasami Reddiar (son of Sanka Reddiar).

RESPONDENT'S WITNESSES

1. Rev. Sowriraj.
2. Sri S. V. Krishna Ayyangar (Presiding Officer, polling station No. 165)
3. , , L. S. Muthusami Ayyar (Presiding Officer, polling station No. 156, Alagianallur).
4. , , Arithir Duvavaram (Presiding Officer, polling station No. 155, Periapalai).
5. , , C. R. Narayana Swami Mudaljar (Presiding Officer, Mallankinar polling station).

6. Sri Susai Michael.
7. ,, Subbiah (son of Shanmugha Nadar).
8. ,, V. V. Shanmugha Nadar (brother of 1st respondent).
9. ,, K. Natarajan (son of Madasati Nadar—polling agent of 1st respondent at Kumara-lingapuram).
10. ,, Chinnakannu Nadar (son of Vadivel Nadar).
11. ,, M. S. Ram, I.A.S. (Returning Officer).
12. ,, M. S. Periasami Nadar.
13. ,, Shanmughasundaram Mudaliar (son of Minakshisundara Mudaliar, polling agent of 1st respondent at Malankinur).
14. ,, Vettai Mooppan (son of Vettai Mooppan).
15. ,, Suryanarayana Thevar (son of Mariappa Thevar, village munsif of Kambikudi).
16. ,, Corkavalan (son of Andi Kudumban).
17. ,, V. V. Ramaswami (1st respondent).

(Sd.) K. S. VENKATRAMAN, *Chairman.*

(Sd.) R. RAJAGOPALA AYYAR, *Member.*

(Sd.) P. R. NARASIMHA AYYAR, *Member.*

[No.19/58/52-Elcc. III/4867]

By Order,

P. R. KRISHNAMURTHY, Asstt. Secy.